



City of Westminster

# Committee Agenda

Title: **Planning & City Development Committee**

Meeting Date: **Thursday 20th June, 2019**

Time: **7.00 pm**

Venue: **Rooms 18.01 & 18.03, 18th Floor, 64 Victoria Street, London, SW1E 6QP**

Members: **Councillors:**

Gotz Mohindra (Chairman)	Jim Glen
Susie Burbridge	Elizabeth Hitchcock
Geoff Barraclough	Louise Hyams
David Boothroyd	Matt Noble
Tony Devenish	Robert Rigby
Peter Freeman	Tim Roca
Murad Gassanly	James Spencer

**Members of the public are welcome to attend the meeting and listen to the discussion Part 1 of the Agenda**

**Admission to the public gallery is by ticket, issued from the ground floor reception at City Hall. If you have a disability and require any special assistance please contact the Committee Officer (details listed below) in advance of the meeting.**



**An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, please contact the Committee Officer, Georgina Wills, Committee and Governance Officer**

**Tel: 0207 7641 7513; email: [gwills@westminster.gov.uk](mailto:gwills@westminster.gov.uk)  
Corporate Website: [www.westminster.gov.uk](http://www.westminster.gov.uk)**

**Note for Members:** Members are reminded that Officer contacts are shown at the end of each report and Members are welcome to raise questions in advance of the meeting. With regard to item 2, guidance on declarations of interests is included in the Code of Governance; if Members and Officers have any particular questions they should contact the Head of Committee and Governance Services in advance of the meeting please.

## **AGENDA**

### **PART 1 (IN PUBLIC)**

**1. MEMBERSHIP**

To report any changes to the membership.

**2. DECLARATIONS OF INTEREST**

To receive and record declarations of interest.

**3. MINUTES**

To sign the minutes of the last meeting as a correct record of proceedings.

**(Pages 5 - 8)**

**4. UPDATE ON THE PLANNING REVIEW**

Report of the Executive Director of Growth Planning and Housing and Director of Place Shaping and Town Planning

**(Pages 9 - 82)**

**5. PLANNING APPEALS 2018-2019**

Report of the Director of Place Shaping and Town Planning.

**(Pages 83 - 94)**

**6. ANNUAL UPDATE ON PLANNING APPLICATION PERFORMANCE**

Report of the Director of Place Shaping and Town Planning.

**(Pages 95 - 98)**

**7. WESTMINSTER'S CITY PLAN REGULATION 19**

The Planning & City Development Committee to receive a verbal update on the Regulation 19 version of the Westminster's New City Plan.

**8. ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT**

**Stuart Love  
Chief Executive  
12 June 2019**



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CITY OF WESTMINSTER

## MINUTES

### Planning & City Development Committee

#### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Planning & City Development Committee** held on **Thursday 17th January, 2019**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

**Members Present:** Councillors Gotz Mohindra (Chairman), Tim Barnes, David Boothroyd, Susie Burbridge, Ruth Bush, Melvyn Caplan, Peter Freeman, Murad Gassanly, Jim Glen, Elizabeth Hitchcock, Louise Hyams, Robert Rigby, Selina Short and James Spencer

Also Present: Councillor Richard Beddoe (Cabinet Member for Place Shaping and Planning)

#### 1 MEMBERSHIP

- 1.1 Apologies for absence were received from Councillors Geoff Barraclough, Tony Devenish, Angela Harvey, Guthrie McKie and Tim Roca.

#### 2 DECLARATIONS OF INTEREST

- 2.1 Cllr David Boothroyd declared that he was Head of Research and Psephology for Thorncliffe, whose clients were companies applying for planning permission from various local authorities. No current schemes were in Westminster; if there were he would be precluded from working on them under the company's code of conduct.

#### 3 MINUTES

##### RESOLVED:

- 3.1 That the Minutes of the Planning and City Development Committee meeting held on 12 November 2018 be approved.

#### 4 PLANNING REVIEW INCLUDING THE INTRODUCTION OF PUBLIC REPRESENTATIONS AT PLANNING APPLICATIONS COMMITTEES

- 4.1 The Committee received a report from the Director of Place Shaping and Planning providing an update on the programme of work that was underway to implement the findings of the Planning Review undertaken by the Planning Advisory Service (PAS). The Cabinet Member for Place Shaping and

Planning presented the report and the Chief Executive, the Director of Place Shaping and Planning, HR Business Partner and the Principle Planning Solicitor were also in attendance to answer questions.

4.2 The Cabinet Member for Place Shaping and Planning provided an overview of the recommendations, which would facilitate the opportunity for members of the public to make verbal representations at Planning Sub-Committee meetings. The following key features of the proposed procedures and protocols relating to public speaking were highlighted:

- Anyone wishing to speak at Sub-Committee meetings would be required to register their interest in advance;
- The number of persons/organisations permitted to speak would differ according to the type of Sub-Committee being held. For the Planning (Major) Applications Sub-Committee, it was proposed to permit a maximum of two speakers in support of the application and two against. Whilst for Planning Applications Sub-Committees 1, 2 and 3 there would be a maximum of one permitted speaker in support and one against. In addition, it was confirmed that the procedure rules would be amended for all Sub-Committee meetings to enable more than one relevant Ward Councillor and amenity society to address the meeting if required.
- A period of three minutes be permitted for each speaker except where the number of requests exceeds the number of speaking slots. In such circumstances, potential speakers would share the total speaking time between them if a nominated spokesperson could not be agreed upon.
- Practical matters including the running order of speakers and permitting verbal representations only.

4.3 The Committee welcomed the proposals and confirmed the importance of permitting public speaking to improve transparency of the planning process and ensure residents were at the heart of decision-making. The commitment that the proposals would be formally reviewed after six months was also considered important to assess how successful the measures had been and allow any improvements to be implemented if considered necessary. Amendments to the proposed procedures were noted and the Committee was pleased that this included permitting more than one Ward Councillor and Amenity Society to make verbal representations. This was especially considered important on applications that had the potential to affect more than one ward. To assist potential speakers the Committee also requested that guidance be produced to try to ensure any verbal representations were relevant and appropriate.

4.4 The Committee discussed the new proposed approach to pre-application community engagement, which included involving communities at an early stage of the planning process to help influence and shape developments. The Committee noted that work on the initial proposals was still ongoing but welcomed the Council playing a more active role at an earlier stage. It was

considered this would help resolve any potential issues in advance of a planning application being formally submitted.

4.5 In response to questions from the Committee the Cabinet Member for Place Shaping and Planning commented that:

- It was not currently proposed for Neighbourhood Forums to have an allocated speaking slot at Sub-Committee meetings, however this could be reviewed after six months;
- Sub-Committee members would not be permitted to ask speakers questions as the Planning Presiding Officer would be present to answer any technical questions;
- The order of speakers was currently considered appropriate but this would be assessed during the formal six month review of the process;
- Minor amendments to the procedure would be made including any references to 12pm being changed to noon and ensuring officers were also asked to declare any interests at Sub-Committee meetings.

4.6 The Committee welcomed the proposals and agreed that facilitating the opportunity for members of the public to make verbal representations at Planning Sub-Committee meetings was a positive step forward. The procedures and protocols required to allow public speaking to take place were considered efficient, effective and fair and Members were pleased to note that they would be subject to a six-month review of their effectiveness. Subject to the minor amendments to the proposed procedure rules detailed above, the Committee agreed the report's recommendations.

**RESOLVED:**

- 1) That the proposed procedures and protocols to allow for members of the public to make verbal representations at Planning Applications Sub-Committee meetings, as amended, be agreed;
- 2) That the proposed procedures and protocols take effect from the first Sub-Committee meeting to be held at City Hall, 64 Victoria Street, subject to a 6 month review of their effectiveness; and
- 3) That the ongoing work to implement the proposals relating to pre-application community engagement and delegated authority with regards to planning decisions be noted.

The Meeting ended at 7.44pm

**CHAIRMAN:** \_\_\_\_\_

**DATE** \_\_\_\_\_

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**City of Westminster**

## Planning & City Development Committee

**Date: 20 June 2019**

**Classification: General Release**

**Title: Update on the Planning Review**

**Report of: Executive Director of Growth Planning and Housing and Director of Place Shaping and Town Planning**

**Financial Summary: The implications will be managed within existing resources.**

**Report Author and Contact Details: Oliver Gibson (ogibson@westminster.gov.uk/ 020 7641 2680)**

### **1. Executive Summary**

- 1.1 This report presents an update on the Planning Review programme of work to deliver improvements to the processes and practices of the planning service to address the findings of the review carried out by the Planning Advisory Service (PAS), which were endorsed by Cabinet on 25 October 2018. Cabinet approved the direction of travel to make the planning service more proactive, transparent and focused on the delivery of the Council's City for All vision and other corporate priorities. This includes making it easier for residents to engage with the planning system in Westminster.
- 1.2 Initial progress on the Planning Review was reported to the Planning and City Development Committee on 17 January 2019 (see Appendix 1). The initial stage in implementing measures to address the PAS report findings comprised the introduction of public speaking at the Planning Applications Sub-Committees. In January the Committee agreed with amendments the procedures and protocols to allow for members of the public to make verbal representations at the Sub-Committee meetings. Public speaking was subsequently introduced at the Planning Applications Sub-Committee on 26 February 2019. To date the agreed procedures and protocols have been successful in facilitating public speaking. Notwithstanding this, a detailed 6-month review of public speaking will be carried out in August 2019 in accordance with the previous Committee resolution. The findings and recommendations of the 6-month review will be reported to the next Planning and City Development Committee.
- 1.3 To incorporate the changes outlined above and to meet the requirements to create a more transparent and robust Town Planning decisions function, attached at Appendix 1 is an updated document titled draft Guidance for members- Making Planning Decisions. This outlines best practice for Members of Planning Committees across a range of issues including standards of conduct, probity in decision making, conflicts of interest as well as support and guidance on the substance and parameters of taking planning decisions. Subject to the views of this Committee it is proposed that this draft

is submitted to the Standards Committee on 11 July 2019. Members are asked to approve the draft Guidance, note that the comments the Standards Committee will be sought and delegate to the Director, in consultation with the Chair, the approval and publication of a final version.

- 1.4 Since January 2019, officers have continued work to establish the scope of changes required to current processes and practices to deliver the service enhancements identified in the PAS report and sought by Cabinet. Following on from the engagement workshops held with Members and external stakeholders in late 2018, planning staff have undertaken visits to observe the planning services of the other local authorities that were identified in the PAS report (Camden, Wolverhampton and Cornwall). Following these visits staff took part in a departmental Away Day on 5 June to identify the strengths and weaknesses of existing processes and practices and identify the aspirations of officers for the future of the service.
- 1.5 Following the Away Day the scope of the changes to procedures and protocols to be taken forward as part of the Planning Review will be finalised. The preferred options for implementation of each aspect of the review will also be identified, including how pre-application community engagement and increased delegated decision making can be delivered. A timetable for implementation of the different aspects of the review will also be set. The preferred options and the finalised timetable will be reported to the next Planning and City Development Committee.

## **2. Recommendation**

- 2.1 Members are asked to consider the contents of this report and to note the ongoing work to implement measures to address the findings of the PAS report as part of the wider Planning Review programme.
- 2.2 The Committee is recommended to approve the draft Guidance for Members – Making Planning Decisions (at Appendix 1), subject to the incorporation of views and advice of the Standards Committee at their meeting on 11<sup>th</sup> July 2019, and to agree to delegate publication of the final version to the Director of Place Shaping and Town Planning, following consultation with the Director of Law and Chair of the Planning and City Development Committee.

## **3. Background**

- 3.1 A review of Westminster's planning service by the Planning Advisory Service and Local Government Association was undertaken in 2018 to look at all aspects of the decision-making process to ensure it is an independent and impartial process.
- 3.2 The findings of the review were reported to Cabinet on 25 October 2018. The review set out a number of key recommendations, which included introducing the opportunity for members of the public to make verbal representations at Planning Applications Sub-Committee. A process and protocol for the introduction of public speaking were endorsed by the Committee on 17 January 2019 and public speaking was subsequently introduced on 26 February 2019. The next phase of the Planning Review programme is focused on delivering changes to processes and practices to address the other PAS recommendations, which were:
  - Development of closer links between development management officers and officers in Planning Policy and the delivery and regeneration teams.
  - Establish appropriate distance between the regulatory planning service and applicants, agents, formal community organisations and the public.

- Review committee practices and procedures to focus resources on strategic development and involve Members earlier in the pre-application and application processes.
- Delegate decision making to a greater number of officers.
- Review roles of the Highways Planning team and the corporate highways function so that they are more closely aligned and share objectives and priorities.
- Continue to seek to improve recruitment and retention of planning officers.
- Review communication of planning decisions, including review of website content, communication of Planning Performance Agreements to ensure the service to be provided to customers is clearly communicated and review of the form of the service offered at pre-application and application stage.

3.3 The purpose of this report is to update the Planning and City Development Committee on progress since January 2019 on the work carried out as part of the Planning Review programme to deliver service enhancements and changes to processes and practices that will enable the recommendations of the PAS report to be realised.

#### **4. Considerations**

##### **Overview of the Planning Review**

4.1 The Planning Review Team has adopted a programme structure designed to enable a collaborative approach to the delivery of the changes required to deliver the PAS report recommendations, which will draw upon the expertise of staff within Place Shaping and Town Planning. The structure comprises three 'Clusters', each with a specific officer lead under which eight 'Workstreams' have been identified. The Workstreams will have a lead officer and a working group comprised of officers from Place Shaping and Town Planning, who will be tasked with developing the necessary changes to existing processes and procedures in tandem with officers from the Planning Review Team. The structure is designed to ensure appropriate oversight of the workstreams, with regular upward reporting of progress on each workstream to the management group within Place Shaping and Town Planning, the Planning Review Board and the Cabinet Member for Place Shaping and Planning.

4.2 Appendix 1 contains a document titled draft Guidance for Members- Making Planning Decisions. This document outlines essential and crucial information and guidance across the broad range of issues that will ensure the outcomes of the planning review are met. This draft updated guidance is designed to ensure that decisions are taken in a robust, transparent way to provide high levels of integrity to the process. It therefore outlines clear advice on the standards of conduct of members in respect of their role on planning committees, including gifts and hospitality, site inspections, dealing with development proposals impacting Councillors, their families or close associates. This is set within general principles such as making decisions with an open mind, absence of predisposition and focusing on material planning matters. Procedural issues are also laid out as well as guidance on how they will be advised at Committees and in reports presented. This guidance should be read in conjunction with extant protocols and procedures for Member involvement at pre-application stage governing requests for meetings with developers (April 2019) and the ongoing member training opportunities. All of this guidance is kept under review and with other changes in prospect as indicated in this report, it is likely that further updates on this will be brought forward. This is to ensure that Members are always fully equipped to continue to make robust, transparent and effective decisions.

- 4.3 Since the previous Planning and City Development Committee in January 2019 officers have undertaken visits to observe the planning services of the local authorities that were identified in the PAS report as examples of innovative and good practice (Camden, Wolverhampton and Cornwall). The visits have allowed officers to more clearly understand how the recommendations made in the PAS report may be realised in practice and enabled the processes and procedures used in these authorities to be understood, whilst also offering insight into the differing scales of these example planning authorities and the varying physical, social and political environments in which they operate. This has enhanced officers understanding of the breadth of options for delivering a successful planning service and has been of significant assistance in undertaking the ongoing scoping and options analysis exercise, which will identify the changes to current processes and procedures that will be taken forward as part of the Planning Review programme.
- 4.4 An Away Day for all officers in Place Shaping and Town Planning was held on 5<sup>th</sup> June to enable all staff within the department, as expert practitioners in their fields, to provide their views and ideas on how the recommendations of the PAS report can most effectively be realised. The Away Day was a significant opportunity to reinforce the cultural change that has occurred within the department to date, particularly following the integration of the Place Shaping Team, and to involve all officers in the formation of a departmental vision, which will define the new culture of the department following the completion of the Planning Review programme.
- 4.5 As well as discussion of a departmental vision, the Away Day focused the potential for reform of the pre-application service to increase transparency and Member and community involvement, the introduction of Design Review Panels, extension of delegated powers to more junior officers, improvement of working relationships with other Council departments and teams and achieving greater digital inclusion through website improvements and best use of software, systems and technology. The ideas and suggestions offered by staff at the Away Day have been collated and reviewed by the Planning Review Team and are being used to inform the scoping and options analysis exercise described in paragraph 4.2.
- 4.6 The scoping and options analysis exercise will result in a paper that will set out the preferred options for delivering the recommendations of the PAS report. A timetable will also be produced to identify the timescales for delivery of the changes to current processes and practice that will collectively deliver a new operating model for the department. The changes that would deliver on the key recommendations of the PAS report will be prioritised within the delivery timetable where possible.
- 4.7 The following sections of the report set out a short update on the key recommendations identified in the PAS report.

#### **Public Speaking at Planning Applications Sub-Committees**

- 4.8 In January the Committee resolved to agree the proposed procedures and protocols to allow for members of the public to make verbal representations at the Sub-Committee meetings. Public speaking was subsequently introduced at the Planning Applications Sub-Committee on 26 February 2019. The agreed procedures require speakers to register in advance on the Council's website if they wish to speak and the number of speakers for and against is limited at each committee meeting with each speaker limited to no more than 3 minutes (see Appendix 1 for full details of the public speaking process and protocol). Up to 7 May 2019 there have been 41 requests to speak publicly at 11 Planning Applications Sub-Committee meetings. Of these, 27 speakers were in

support of schemes and 13 speakers were objecting to schemes. One representation was made by a local amenity society.

- 4.9 To date the agreed procedures and protocols have been successful in facilitating and managing public speaking at Planning Applications Sub-Committee meetings. Notwithstanding this, a detailed 6 month review of public speaking will be carried out in August 2019 pursuant to the requirements of the January 2019 Committee resolution. The review will include consultation with all participants and stakeholders, including members sitting on the three Sub-Committees. The findings and recommendations of the 6 month review will be reported to the next Planning and City Development Committee.
- 4.10 Work is currently on going to source, procure and introduce software and technology that will allow live recording and streaming of planning committee meetings, with the expectation that this service will be commenced in autumn 2019. This will allow applicants and stakeholders to watch the meeting live or view previously recorded committees and encourage wider participation and transparency in the planning process. Once installed, the system will be available for use by other committees held in the same room, such as Licensing.
- 4.11 In tandem with the introduction of recording and live streaming of committee meetings a regular programme of training will be arranged for the Members of the three Sub-Committees. It is intended that training will be provided for Members on a quarterly basis with the dates to coincide with Planning and City Development Committee meetings. The training to be offered as part of this programme will be confirmed in due course but will include media training, as well as topic based training on planning policy and legislation.

### **Pre-application Community and Member Engagement**

- 4.12 The PAS report recommends that the Council develops a new approach to the early involvement of communities in shaping development proposals, which is proportionate to their scale. The report to the Planning and City Development Committee in January 2019 set out how this recommendation could be realised through planning officers playing a greater role in co-ordinating pre-application engagement on major schemes. This will enable more transparent consultation with the local community and enable the involvement of ward councillors, who will be able to play a stronger role in influencing and guiding developments in their ward at an earlier stage in the planning process.
- 4.13 Following feedback from stakeholders in late 2018 and in light of the visits to Camden, Wolverhampton and Cornwall, and the Away Day sessions with Place Shaping and Town Planning officers, the Planning Review Team are currently considering the options for how this more transparent and engaging pre-application process can be delivered. The design of this service will draw on the examples of good practice that have been observed, albeit with the service designed specifically for the particular needs and constraints of Westminster. It is expected that formal recommendations and more detailed proposals will be reported to the next Planning and City Development Committee.

### **Delegated Authority**

- 4.14 The PAS report recommends that Planning Applications Sub-Committee meetings should focus on major and contentious applications rather than small-scale applications which raise local issues and that such applications should be delegated to officers. The current scheme of delegation to officers allows for most applications to be delegated to

officers with officers using their discretion to report applications to a Sub-Committee depending on the nature of objections received. At the time of the Planning and City Development Committee in January 2019, 97% of planning decisions were being taken under delegated authority by planning officers.

- 4.15 It has been observed that since the publication of the PAS report and the Cabinet decision to endorse it, there has been a cultural shift in terms of officers exercising their delegated authority to determine smaller scale applications; albeit working within the parameters of the terms of the existing schedule of delegation. This has already resulted in a downward trend in terms of the numbers of applications being reported to the Planning Applications Sub-Committees. As a result, it was possible for the Annual Council Meeting to resolve on 15 May 2019 to reduce the number of Planning Applications Sub-Committee's from 4 to 3. This reduction will deliver some limited departmental cost savings and reduce the time spent by officers on the time consuming committee processes.

**Table 1 – Numbers of Applications Reported to the Planning Applications Sub-Committees.**

Period	No. of Meetings	No. of Apps Reported	No. of Items	Length of Committee (Hrs)	Items Per Hour
<b>2017/18</b>					
Half Year 1 - 1 May 17 to 10 Oct 17	24	192	7.67	1.92	4.30
Half Year 2 - 17 Oct 17 to 24 April 18	24	184	8.00	2.05	4.46
<b>YR TOTALS</b>	<b>48</b>	<b>376</b>	<b>7.83</b>	<b>1.98</b>	<b>4.38</b>
<b>2018/19</b>					
Half Year 1 - 1 May 18 to 23 Oct 18	24	160	6.67	1.74	4.26
Half Year 2 - 30 Oct 18 to 23 April 19	22	103	4.68	1.67	3.37
<b>YR TOTALS</b>	<b>46</b>	<b>263</b>	<b>5.98</b>	<b>1.78</b>	<b>4.01</b>

- 4.16 In light of paragraphs 4.14 and 4.15, it is not envisaged that significant change to the current schedule of delegation from Members to officers will be required in respect of the reporting of applications to a planning committee, although limited amendments could be made to afford officers greater delegated powers in the case of minor applications where only a small number of objections on valid planning grounds have been received. As reported in January 2019, it is expected at this stage that Ward Councillors will retain their right to call in all planning applications to Committee and will be required to attend the Committee meeting to discuss any concerns about an application in their ward if they have called the application in. However, all of these options are currently being scoped by the Planning Review Team as part of the options analysis process.
- 4.17 As reported in January 2019, the Planning Review Team is in the process of exploring options for increased delegation to a wider number of planning officers and to delegate the hierarchy of decision making which is currently highly concentrated at a senior officer level. It is proposed that planning officers engage more with Ward Councillors at the pre-application stage to solve issues, thereby avoiding the need for an application to be reported to a Planning Applications Sub-Committee at the end of the process. Appropriate checks and balances would remain in place with peer review of proposed decisions and escalation controls in the event of certain thresholds being reached with different applications. This will require a comprehensive shift in culture as

well as a training and development programme for officers, planning for which has already commenced.

- 4.18 These proposals, for which options are currently being modelled and analysed, will be considered as part of the review of the operating model of the directorate, which forms part of the wider changes envisaged as part of the Planning Review programme.

#### **Achieving Closer Alignment and Developing Relationships with Other Services and Directorates**

- 4.19 The PAS report encourages closer alignment between development management officers and officers in other departments and teams, including planning policy and the delivery and regeneration teams. It also suggests review of the relationship and linkages of the Highways Planning team with the Council's corporate highways function so that the two are more closely aligned and share objectives and priorities.
- 4.20 Initial discussions have been held between Place Shaping and Town Planning officers and officers in Planning Policy and the Economy Team, with the aim of building more positive and collaborative relationships to improve the delivery of the Council's corporate objectives through planning decision making. Further discussions to formalise the future relationships and linkages with these teams will be required and separate discussions will also be required with the delivery and regeneration teams. Progress towards adoption of the new City Plan will assist this process as the new suite of policies this will deliver will be more closely aligned with the Council's current priorities, aims and objectives than those contained within the current 2007 UDP and 2016 version of the City Plan.
- 4.21 In response to the findings of the PAS Review the Highways Planning and Trees teams are in the process of being moved to within City Management and Communities so that they are more closely aligned with the corporate highways function in terms of line management. However, these teams will remain in their current form and will continue to provide the same service to Place Shaping and Town Planning in terms of their observations on development proposals and tree works applications.
- 4.22 The Planning Review project will investigate whether there are opportunities for linkages between Place Shaping and Town Planning on an operational level, such as through the shared use of technology with other departments including Licensing.

#### **Enhancing Transparency and Maintaining Probity**

- 4.23 The PAS report recommends that appropriate distance between the regulatory planning service and applicants, agents, formal community organisations and the public is established. The report to Cabinet enabled the Chief Executive to restate to both officers and Members their responsibilities in terms of the Council's gifts and hospitality policies. Cabinet's endorsement of the cabinet report and the findings set out in the PAS report therefore marked a point of change in terms of the relationship that officers have with applicants, agents, formal community organisations and the public in future. Subsequently training has been undertaken by all officers to ensure that they are aware of the requirements of the anti-bribery policy.
- 4.24 As outlined above in paragraph 4.2, the 'Guidance for Members Making Planning Decisions' document has been updated to reflect changes in Town and Country Planning legislation, regulations, and Council policies and procedures. The updated Guide includes a section on gifts and hospitality, the value of high standards of probity to the integrity of the decision making system, conflicts of interest. underlining the

strong relationship between this high standard of decision making and creating good places as it gives confidence for sustainable investment from residents and businesses.

### **Recruitment and Retention**

- 4.23 The PAS report acknowledges that there are and have been ongoing efforts made to seek to improve the recruitment and retention of officers within the planning service. When carrying out the Planning Review programme the options for changing and evolving the service will have regard to all opportunities they also provide in terms of improving the career development of officers and to empower officers to take greater ownership of their work. In these regards the potential changes being considered in respect of delegated authority offer a significant opportunity to enhance the role of officers in the planning decision making process. There will though need to be appropriate training put in place to ensure that officers are suitably equipped to exercise greater delegated authority and have the skills necessary to work more autonomously.

### **Setting and Communicating Service Provision and Decisions**

- 4.24 The Planning Review project will review the form that the pre-application processes take in the new operating model to ensure that it includes community and Member involvement as set out in paragraphs 4.12 and 4.13. As part of this process officers will review the way in which the benefits of pre-application advice and Planning Performance Agreements are communicated to applicants and their professional representatives. The introduction of more formalised processes to ensure community and Member involvement at pre-application stage will assist in developing a framework that provides a clear demonstration to applicants of the benefits of seeking pre-application advice. Pre-application advice is currently offered on the basis of a 'sliding scale' with only written advice provided for small scale development with meetings and written responses provided only for larger scale developments, with the fee amount increased set accordingly. The review of the pre-application processes will consider whether this model remains appropriate or whether a more customer focused model should be adopted with the pre-applicant determining the level of service they wish to pay for.
- 4.25 Likewise the service offered to applicants entering into a PPA will also be reviewed to make the service that is offered more tangible and structured so that the value that is derived from PPAs is apparent to applicants. The review of PPAs is likely to consider the model wording for PPAs and at what stage in the planning process they are entered into. At present they are typically entered into at the point at which an application is submitted, but they could be used to better effect for both parties if entered into earlier in the planning process, for example at pre-application stage.
- 4.26 In tandem with the review of the pre-application advice service and the PPA service the opportunity will be taken to ensure that the fees charged for these services are reflective of the full cost of providing these services.
- 4.27 The Planning Review project includes a dedicated workstream focused on enhancing digital inclusion. This will review options to enhance the content of the planning section of the Council's website, as well as considering how the planning process and planning decisions can be better communicated to stakeholders.
- 4.28 Initial measures to better communicate the planning process to applicants and stakeholders digitally were previously implemented with the introduction in October 2017 of e-notifications to applicants of significant planning application milestones (e.g.

validation of application, end of consultation period etc.). Since the PAS Review this has been supplemented by the introduction in January 2019 on a trial basis of an e-notification service to allow stakeholders who choose to create an account on the Council’s website to receive notification of all future applications on a specified site or within a geographical area that they specify. The initial take-up of this service, which has not received significant publicity due to it being introduced on a trial basis, is set out in the table below. Following the end of the initial 6-month trial period, it is expected that the Planning Review programme will seek to ensure that the availability of this service is more clearly advertised as part of the Council’s digital ‘offer’. For example, the service could be actively promoted to residents and businesses as part of other online processes and interactions (e.g. at the end of online payment for parking permits etc.).

<b>Month</b>	<b>Number of Subscriptions/Accounts</b>	<b>Total</b>
January	10	10
February	23	33
March	17	50
April	33	83
May	13	96

**5. Financial Implications**

5.1 The implications will be managed within existing resources.

**6. Legal Implications**

6.1 None.

**7. Conclusion**

7.1 From the above update, it will be noted that considerable work has already been undertaken to enable the delivery of improvements to the processes and practices of the planning service to address the findings of the review carried out by the Planning Advisory Service (PAS), as endorsed by Cabinet on 25 October 2018. Members are also asked to note the ongoing work on the Planning Review project to deliver further positive change and enhancements to the current processes and practices of the planning service, including facilitating improved pre-application engagement with the community and Members and review of the delegation arrangements for planning decisions.

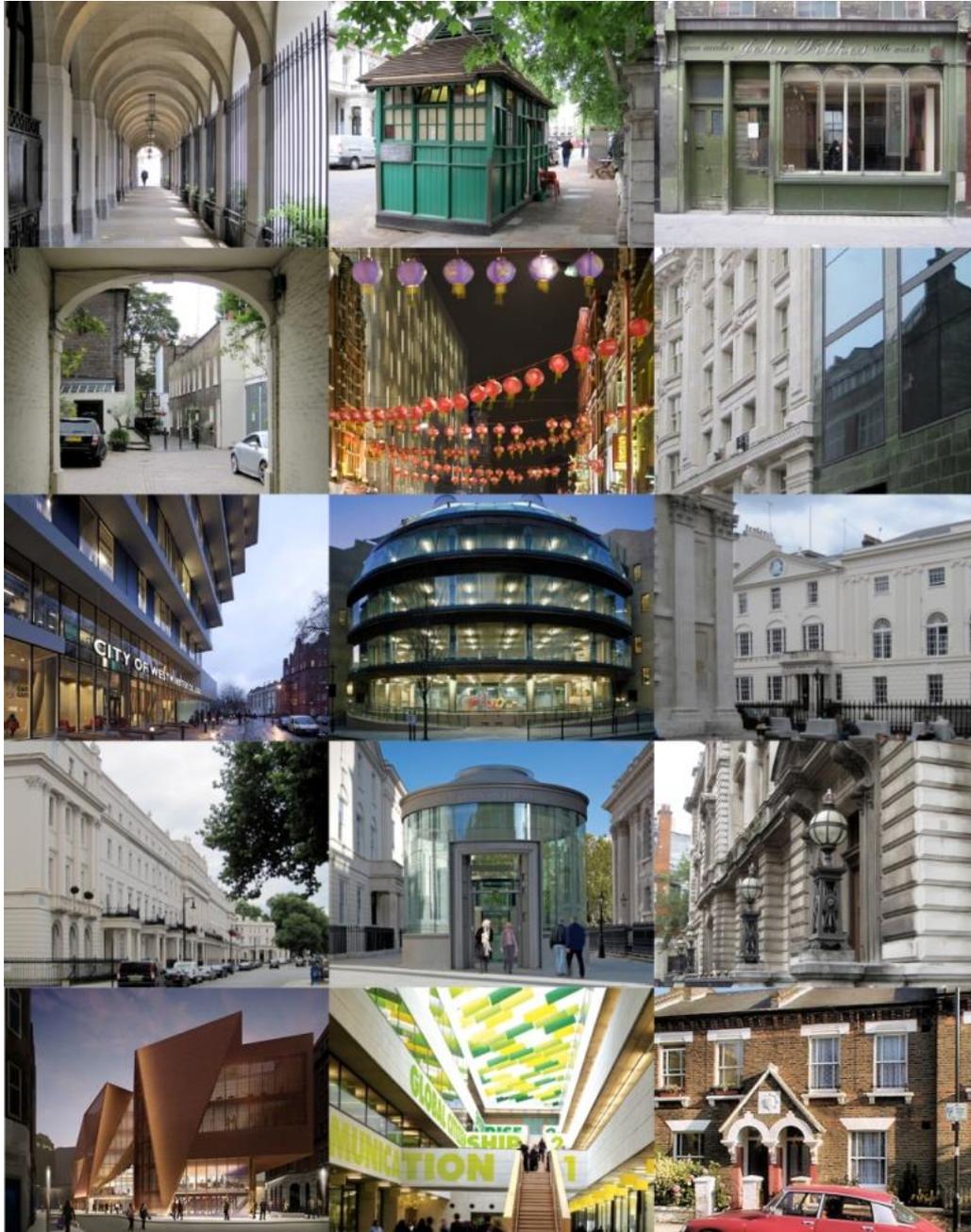
**If you have any questions about this report, or wish to inspect one of the background papers, please contact: Oliver Gibson (ogibson@westminster.gov.uk / 020 7641 2680)**

**Appendices:**

1. Draft version of updated 'Guidance for Members – Making Planning Decisions' guidance document.
2. Report to the Planning and City Development Committee dated 17 January 2019 and minutes.
3. Report to Cabinet on Planning Review dated 25 October 2018 and associated resolution and appendix.

# GUIDANCE FOR MEMBERS

## Making Planning Decisions



Growth Planning and Housing 2019



## **INTRODUCTION**

These guidelines have been produced to help Members of the Planning Applications Committees to make robust and consistent planning decisions. They are supplemented by Member training programmes for both induction of new Members of Planning Committees to ongoing guidance for incumbent Members on a topic basis.

These guidelines do not seek to be comprehensive. Much more information on town planning material considerations and procedural matters can be found in our published guidance leaflets, together with advice from central government on the National Planning Policy Framework, Planning Practice Guidance and the Localism Act. However, if you have any queries or concerns, please discuss them with officers. Contact names and numbers are given at the end of this document. Appendix 1 provides some broad information upon some of the issues that may arise at Committee such as what is permitted development and the use classes order.

The Town Planning Service deals with all planning applications, planning appeals against our decisions, the enforcement of planning control, conservation and design work, the production of information publications, maintenance of the statutory register of planning applications, responses to land search inquiries and general planning inquiries. The service also deals with works to trees and Tree Preservation Order matters.

Planning applications must be decided in the context of published planning policies. The City Council's policies are prepared by City Policy and Strategy, which is part of Policy Performance and Communications Service. The law requires planning decisions to be made in accordance with the policies 'unless material considerations indicate otherwise'.

We attach great importance to consulting the public and local amenity societies and taking their comments into account. However, the way we work, and the way you take decisions, is governed by strict rules about what can and cannot be considered. Importantly, our work is also affected by the need to meet targets for the number of decisions we make within the time periods required by Government.

These are:

- 16 weeks for cases that need an 'Environmental Impact Statement';
- 13 weeks for major cases; and
- 8 weeks for the rest.

The priority we must give to meeting these targets limits the extent of our negotiation with developers once they have submitted their application. However, we encourage developers to enter pre-application discussions.

Any comments you have on these guidelines would be appreciated and will be taken on board when they are next updated

Deidra Armsby

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## 1. GOOD PRACTICE IN PLANNING

In dealing with planning matters, it is of utmost importance that you become familiar with and adhere to the requirements of the Members' Code of Conduct. Any failure by you to comply with the ethical standards expected of you may result in a complaint and investigation for the breach of the Code and in certain circumstances, result in you being required to step down or may otherwise have serious ramifications for the reputation of the Council as a whole.

You must not only approach decisions with impartiality but must also have the appearance of impartiality. You must be free of bias and not be pre-determined although legitimate predisposition is lawful. Not complying with these requirements may provide grounds on which applicants may challenge affected decisions. Public confidence in the way in which decision-making is conducted is of considerable importance.

### The Code of Conduct

You should also be aware of and adhere to the following general principles, which are applicable to all public office holders:

- (i) Selflessness (acting in the public interest and not for any financial gain or similar benefit for themselves, friends or family);
- (ii) Integrity (not placing oneself under any actual *or perceived* financial or other obligation to outside individuals or organisations that may seek to influence their decisions);
- (iii) Objectivity (selecting public appointments, awarding contracts or recommending individuals for benefits or rewards should be based upon merit);
- (iv) Accountability (being accountable for decisions and actions to the public and submitting themselves to whatever scrutiny is appropriate to their office);
- (v) Openness (acting in a manner that is as open as possible about the decisions and actions they take, providing the reasons for their decisions and restricting information only where the wider public interest clearly demands it);
- (vi) Honesty (being under a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest);
- (vi) Leadership (promoting and supporting these principles by leadership and example).

These considerations and general principles must be borne in mind, even when actively engaging in development proposals as enabled by the Localism Act 2011. It should be noted that the Localism Act 2011 expressly provides that a member will not be taken to have had (or appeared to have had) a closed mind just because they had previously done anything that directly or indirectly indicated the member's view on a matter which was relevant to a decision. However, this does not detract from the general importance of approaching decisions with an open mind. You should remember that your overriding duty is to the whole community. You should not favour or appear to favour any person, group, company or locality. You should make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

## **Conduct and Interests**

This Guidance is complementary to the Council's Members' Code of Conduct. Members should apply both the Council's general Members' Code of Conduct and this Guidance in dealing with planning issues.

All Members are always bound by the Council's Members' Code of Conduct ('the Code') and are acting in their official capacity. It will therefore apply regardless of what capacity a Member approaches a planning matter. If a Member has an interest (as defined by the Code) in any matter the existence and nature of the interest must be disclosed at any relevant meeting at the beginning of the meeting.

Where a Member is in any doubt about whether they have an interest and whether it needs declaring they are advised to always seek the advice of the Director of Law or other relevant officers disclosing all material facts. The responsibility to declare and the decision as to whether an interest should be disclosed and whether to withdraw from the meeting because of any declared interest rests with the Member.

Where a Member has a relevant interest either pecuniary or non-pecuniary the nature of which means the public would consider that the Member could not be objective about the matter they should:

- ask another ward Member to represent ward or local views on such a matter;
- make sure s/he does not get involved in the processing of the application by using their position as a Member to obtain personal access to officers or papers;
- not lobby other Members including via the circulation of letters or emails or by raising the matter in political group or similar meetings;
- not in any way take part in the decision-making.

### **Pecuniary interests**

Members are referred to the Code for definitions of interests but importantly if the Member has a pecuniary interest they may not participate in making the decision either formally or informally behind the scenes. The Member should also avoid giving any appearance of participation as it is important to maintain public confidence in the impartiality of Members in decision-making. Taking part whilst having a pecuniary interest is a criminal offence.

### **Non-pecuniary interests**

Any interest that does not amount to a pecuniary interest, but which would have a significant impact upon a Member's judgement should be declared by the Member at a meeting where that interest is relevant. Whether such an interest should be declared is a matter for the Member's own judgement having full regard to the facts. A planning application on a site near to the Member's home is an example of a non-pecuniary interest.

There are very likely to be interests which do not amount to a pecuniary interest but where the public expectation would be for the Member to not participate. It falls to the Member in each case to make their individual judgment as to whether their participation is appropriate or not given the nature of the interest. Members are encouraged to declare an interest in a matter for reasons of good practice and transparency for the purposes of being as open as possible with the declaration having no impact on the Member's participation.

## **Bias and predetermination**

Members have a legal duty to avoid bias or the appearance of bias. Bias is the tendency to favour one side of an issue because of an irrelevant factor such as a close relationship with a party to the matter. Members also need to avoid predetermination in other words having a closed mind in a case. They should ensure they do not do or say anything which indicates that they have made their mind up on an application or policy matter before it comes before the Committee for example by stating in advance how they will vote. A Member voting on a planning matter must maintain an open and impartial approach and have regard to all material considerations and all the evidence before coming to their definitive conclusion.

The Localism Act 2011 sets out what a court can take into account in considering whether bias and pre-determination has occurred. Section 25 of the 2011 Act provides that a decision-maker is not to be taken to have had or appeared to have had a closed mind when making the decision just because they had previously done anything that directly or indirectly indicated what view they took or might take in relation to a matter. The aim is that Members act and are seen to act impartially and honestly by approaching each planning decision fairly between the parties and with an open mind. If a Member wishes to take a stance in relation to a development or feels that it will be difficult to demonstrate that they have followed a consistently fair approach between all parties in a case, they should not be part of the decision-making process on the application. In such an instance they can choose to act as a ward Member on that matter. Irrespective of whether a Member has a pecuniary interest in a planning matter they must not be involved in the decision-making if this would render such a decision liable to challenge in the courts on the grounds of bias or predetermination.

## **Gifts and Hospitality**

Accepting gifts and hospitality in your capacity as Member is not unlawful. However, as a Member of Planning Application Committees, you must exercise extreme caution, given how it might be perceived by the public. The best advice is to avoid accepting gifts and hospitality but understandably refusal might be awkward at times. As a minimum you must be scrupulous in declaring gifts and hospitality, as well as all disclosable pecuniary and non-pecuniary interests and if necessary, excuse yourself from planning committee or retire from consideration of a matter to avoid a conflict of interest. Even where gifts and hospitality may be lawfully accepted, Members remain responsible for considering the propriety of doing so and declaring any such gifts and hospitality to avoid speculation and negative perception.

The obligations in the City Council's Code of Conduct are placed on Members individually. You must consider whether your actions could lead to a perception, whether fairly or unfairly that may damage your reputation and/or that of the Council. You should always be aware of whether your conduct promotes and supports high standards of conduct through leadership and by example.

In considering these matters, you should have regard to the value of any benefit received, the number or frequency of such benefits and the connection between the benefits

received and planning decisions that you will be involved in making. In some circumstances, actions that are neither unlawful nor breach the Code of Conduct will be inappropriate from the point of view of the Council's reputation.

Under the Bribery Act 2010 it amounts to an offence to offer financial or other advantage to another person or to accept such an advantage if the receipt or anticipation of receipt of such an advantage would result in, be intended to result in, amount to, or be done in return for the improper performance of a public function. In this case, the public function to be properly performed is the lawful determination of planning applications.

If for any reason you are unclear about what is expected of you, you are advised to seek advice from in the first instance the Director of Place Shaping and Town Planning **before** taking action or accepting gifts or hospitality.

### **Site Inspections**

The Committee may resolve to make a site inspection before reaching a decision. In such cases these are fact finding exercises and not opportunities for applicants and objectors to lobby the members. You should refrain from giving views to either party. If you choose to make your own site visit prior to the committee meeting you should do so alone and should rely on street views only. If you meet an objector or the applicant on site, by accident or design, you should not sit on the determining committee. To do so would be to invite criticism that you have offered one party an unfair advantage.

### **Decisions contrary to Officers' Recommendation**

Planning decisions must be made in accordance with the 'development plan' unless material considerations indicate otherwise. Decisions must be capable of being substantiated so, in the interests of openness and clarity, the reasons for a planning decision contrary to the officers' recommendation should be discussed and clearly agreed and included in the minutes of the Committee meeting.

### **Development proposals submitted by, or which may have an impact on Councillors, their families and their close associates**

It is important that applications submitted by Councillors and their close associates or which relate to sites affecting them/their close associates are processed without the suspicion of impropriety or favouritism. There is a box on the planning application forms which must be completed.

The following advice is provided to assist Members in this situation:

You should declare a pecuniary and non-pecuniary interest where under the Members' Code of Conduct your interest is such that a conflict of interest arises because of family links, business associations, social contacts, membership of clubs or similar associations, land ownership, tenancies and sponsorship. In these circumstances you must declare the nature of your interest and ensure that it is written into the minutes of the meeting and must leave the room without speaking or voting on the item. Where your interest under the Code is non-pecuniary subject to the guidance given at section above, you must declare it for the purposes of ensuring that it is entered the minutes of the meeting but may remain

and take part in both speaking and voting on the item.

Where you have applied or are aware that your immediate family members/other close associates have applied, you should advise the Director of Place Shaping and Town Planning or relevant Team Leader.

Proposals submitted by you or your close associates will be presented to Committee for determination and will not be dealt with under delegated powers.

If you have an interest whether pecuniary or otherwise in an application you should ensure that you do not try to use your position to seek to influence the officers' recommendation or Committee Members' decision in determining it, by avoiding direct negotiations with officers and lobbying of other Members and officers. Please see refer to the Good Practice in Planning. In the interests of probity, if you have business or other interests that may bring you into regular contact with the City Council's planning system you should consider whether it is appropriate for you to sit on the Committee.

If you ever have any concerns on issues relating to probity or declaration of interest, you should contact the Director of Law, who will be able to advise you.

## **2. COMMITTEE STRUCTURE**

### **The Planning Applications Committees**

There are three Committees on Tuesdays at 6.30 p.m. on the 18<sup>th</sup> Floor City Hall. There is a Major Applications Committee which comprises of seven members in total (5 from the majority party and 2 from the minority party). Two Sub-Committee's operate which are comprised of four members (Members of the majority party and 1 Member from the minority party, there is therefore a total of 15 Members (3 of whom act as Chairman) who sit on the Committees on a rota basis.

The Committees consider planning and related applications which have generated public interest or concern or are of a major, controversial or sensitive nature or which, if approved, would set a significant precedent. Most of the applications are dealt with by officers under delegated powers. The Committee also decide on whether to confirm Tree Preservation Orders (TPOs) and give guidance to officers and the Cabinet Member on emerging planning policy documents, including Planning Briefs/ Supplementary Planning Documents. In addition, Committee has the power to approve highway works and stopping up orders required in connection with planning applications.

### **Decisions delegated to specified officers**

The Council receives about 200 applications a week and it would be impractical to report them all to the Committees for determination. So, many minor and non-controversial applications are decided by specified senior officers acting under delegated powers and currently deal with 97% of applications by delegated powers.

Members are sent a weekly list of planning applications received, and if you have any questions please contact the relevant team leader or the case officer. If you do decide to request that an application is reported to the Committee for determination rather than

being dealt with under delegated powers, you will be expected to set out your reasons and you must attend the committee meeting in person to speak either for or against. If you cannot attend the meeting, you must send a substitute.

In addition, each week we notify you of the more significant applications which we intend to decide under delegated powers. These are known as 'DIRM' cases (Delegated Items Referred to Members). These applications are also shown to the Chairman before each Committee meeting and need his/her agreement before we make the decision. If you have any queries on any DIRM case, please contact the relevant Team Leader.

### **3. COMMITTEE PROCEDURES**

#### **The Director's Reports**

The agenda contains separate reports for all the applications that are to be considered. Each report starts with a table of information, a recommendation, a map and photo(s), several relevant drawings, a short summary and a list of consultees and their responses. It then describes the development proposals, details the relevant planning issues and policies and provides a justification for the officers' recommendation. Usually the recommendation is to either grant or refuse permission and is the professional advice of the Town Planning service. At the end of each report, the draft decision letter(s) sets out the conditions or reasons for refusal.

The use of concise reports with clearly justified recommendations has been identified as good practice in various investigations into local government procedures. It assists the debate on development proposals to proceed in a structured and disciplined manner. Importantly it provides evidence that the decision was made in a thorough, proper and considered way.

Any report that asks the Committee to decide whether to confirm a Tree Preservation Order (TPO) is written by the Head of Legal Services. This is because the original decision to make the TPO will normally have been made by the Director under delegated powers; the report to Committee asks Members to balance the reasons for the making of the order against the concerns of objectors to the Order. The Committee, therefore, has a quasi-judicial role in these cases. A tree officer will be present, but only to answer technical questions, not to justify the making of the Order.

Committee may also consider applications to fell TPO trees because they may be causing structural damage and there is a claim for compensation. Such cases are confidential as they raise financial implications for the Council.

The agenda papers are usually sent to you on the Wednesday preceding the Tuesday Committee. In addition to your agenda you will also receive a bundle of background papers (green front cover) which contain copies of the representations that have been received on the agenda items.

Chairs of the Committee are advised of the numbers of people who have applied to speak at Committee by the Committee Officer normally on Friday afternoon once the deadline to register has closed.

Late representations (blue front cover) will be sent to you in the Members' Dispatch the Thursday before the meeting (these include any representations received after the

committee report was written). Very late representations (red front cover) will be presented at the committee meeting by the presenting officer.

### **Officers attending Committee**

The **presenting officer** gives a short presentation which describes the proposal, summarises the representations received, describes the impact of the development on neighbours and explains the relevant planning policies and the reason for the recommendation.

We use several monitor screens to show drawings, photographs etc to the members of the Committee, with the images also being relayed to several large flat screens in the public gallery.

The **design officer** at committee gives specialist urban design, architectural and conservation advice and answers your questions on these issues.

The **presiding officer** is present to assist you with more difficult questions and give advice on strategic and corporate policy issues. This will be one of the Area Team Leaders.

A **Legal officer** will be in attendance to ensure legal issues can be fully addressed.

Whenever there is a need for the availability of further expertise relevant officers (for example environmental Health officers, highways engineers) will attend to ensure that Members have a full range of advice and guidance to make robust decisions.

### **Public Speaking at Committee**

We notify all those people who make representations including the agent that an application is going to Committee. If they wish to register to speak, this must be done on line [www.westminster.gov.uk/planning-committee](http://www.westminster.gov.uk/planning-committee) and they must register by 12 noon on the Friday before the Committee.

The Committee section will email the Chairman/Committee Members and the presiding officer the names of people who have registered to speak on Friday afternoon and whether speaking in support or against.

It has been agreed that each individual speaker attending the Committees will have 3 minutes to speak.

Speakers at Major Applications Committee are capped at 2 for and 2 against. Sub-Committee it is 1 speaker for and 1 against. If there are more speakers than slots more than one speaker they are asked to either nominate a person to speak on their behalf, or the slots will be divided.

Ward Councillors and the local amenity society if they wish to speak at Committee must also register on line by Noon on Friday.

Late representations to speak after the deadline will not normally be permitted.

Speakers are invited after the officer's presentation to sit at the desk and address the Committee. On our website is a list of the material planning considerations Committee can consider and those which cannot.

<b>Order of Business</b>	
<b>i)</b>	<b>Planning Officers presentation of the case</b>
<b>ii)</b>	<b>Applicant/agent or other supporters</b>
<b>iii)</b>	<b>Objectors</b>
<b>iv)</b>	<b>Amenity Society (Recognised or Semi Recognised)</b>
<b>v)</b>	<b>Ward Councillor(s) and/or MP(s)</b>
<b>vi)</b>	<b>Council Officers response to verbal representations (if required)</b>
<b>vii)</b>	<b>Member discussion (including questions to officers for clarification)</b>
<b>viii)</b>	<b>Member vote</b>

### **Making a Decision**

The order of items on the agenda will have been arranged by officers, usually with the more major or contentious items at the start. However, the Chairman will decide the order in which the cases will be considered, and it depends on whether people have registered to speak

It is usual for items where there are Ward Councillors present to be taken first, followed by items for which there are members of the public present. The presentation, therefore, is not always in agenda order. Overall, the agenda usually comprises between 3 and 8 items.

You may agree or overturn the recommendation or may include additional conditions or agree the recommendation subject to a legal agreement if justified in planning terms. A decision on an item may also be deferred if you wish to visit the site, or consider that further consultations should be undertaken, additional information or clarity is required, or you wish officers to seek modifications to the scheme. Deferred decisions are generally brought back to same Committee for the decision.

Draft decision letters are sent out with your Committee papers. Proposals to grant permission or listed building consent normally include several conditions attached, and these can cover design issues such as the submission of samples of materials and design details, controlling future uses, and limiting hours of building work. An informative is added to decision letters granting planning permission and listed building consent, which summarises the reasons for approval. Decision letters which refuse planning permission/listed building consent must include reason(s) why the development is not acceptable.

### **Overturning a Recommendation**

Sometimes you may not reach the same conclusions as officers and decide not to accept the recommendation, In making their recommendation, the case has been fully assessed by the professional planning officers and pursuant to Council's policies. Decisions are subject to legal challenge and therefore care is required to ensure that such decisions are defensible at appeal or Judicial Review and there is the additional risk of a costs award against the Council where a decision is found to be unreasonable. Planning decisions are often difficult, they require the balancing of conflicting factors and judgement on the weight

to be attached to different elements of the consideration. The Presiding Officer is there to assist you and you can ask their professional judgement.

However, where you decide contrary to the officers' recommendation, or impose additional conditions or reasons for refusal, you **must give sound and clear-cut planning reasons** for your decision. You do not have to agree the detailed wording for the extra condition or reason for refusal. This can be brought back for ratification later if necessary but is usually entrusted to senior officers to deal with under their delegated powers. However, you must make clear the **planning reasons** that have led to your decision. It is therefore essential that the grounds for the decision are given and minuted at the Committee meeting, particularly where the recommendation is overturned.

Failure to do this would make it very difficult for the Council to defend its decision on appeal. It is also likely to lead to a **claim for costs being made against the Council**. (See section 8) and raises reputational issues for the Council.

Members will be asked to vote in respect of the final recommendation by a show of hands. The Committee Chairman does have the casting vote. The vote is recorded in the committee minutes.



York Watergate, WC2

**4. OTHER TYPES OF APPLICATIONS**

In addition to planning applications, the following types of applications are submitted under the Planning Acts.

**Listed Building Consent**

There is an enhanced procedure for proposals involving Listed buildings. Consent is required for most works (both internal and external) to a listed building. These applications

may be submitted on their own where the works are purely internal, or in conjunction with planning applications when both internal and external work is proposed. Most applications relating to Grade II listed buildings (the lowest grade) can be decided by the Council without formal clearance from Historic England, as with planning applications. However, for applications involving demolition, and all applications affecting Grade I and Grade II\* buildings, the City Council cannot issue a listed building consent until formally authorised to do so by Historic England. Committee Members are therefore not the sole decision makers in these cases.

The main issues to be considered when dealing with listed building consent applications are the likely effects of the proposal on the architectural or historic qualities of the building.

Section 16(2) of the Planning (Listed Buildings and Conservation Area) Act states:

"In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

In certain circumstances a further layer of decision making occurs as approval is required from the Secretary of State for the total demolition of a listed building and for any listed building application where the City Council itself is the applicant.

The Planning (Listed Buildings and Conservation Area) Act also gives guidance for situations where the Council is considering a *planning* application affecting a listed building. Section 66(1) states:

"In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

### **Advertisement consent**

Separate regulations cover the procedures and relevant considerations for advertisements, which include shop signs, blinds (with writing on) and estate agents' boards. Most small scale, low level, non-illuminated signs do not require consent from the City Council. Material considerations in the determination of Consent are specifically limited to **public safety or amenity**.

With respect to estate agents' boards, the City Council has several specially designated areas ('Regulation 7 Areas') where no signs advertising residential properties are allowed, and where we will only permit signs on commercial properties when the detailed design accords with an agreed code and for a limited six-month period.

### **Planning Enforcement**

Local planning authorities provide planning enforcement services which are a vital part of the planning process. By identifying and tackling cases of unauthorised development, the enforcement process ensures fairness, stops unacceptable development and gives communities confidence in the system. The Localism Act 2011 gave new powers to local

planning authorities by extending the time available to them to investigate cases where unauthorised development has been deliberately concealed.

Although effective planning enforcement is fundamental to the integrity of the system, responses to breaches of planning control should always be proportionate. Where work has been undertaken without the necessary permission, there is scope to apply retrospectively for planning permission, and we do request that applicants apply to regularise the situation.

These powers do not condone development being undertaken without the correct permissions, but they do enable local authorities to use their planning enforcement powers proportionately.

Because of an enforcement investigation, a retrospective application is made. In determining such applications at committee members must ensure that the same process of ensuring a robust and consistent decision is made. The fact that unauthorised works have taken place does not change the range of material considerations that determine the decision. The application must be determined on its planning merits and its retrospective status is NOT in itself a material consideration.

## **5. MAKING PLANNING DECISIONS**

Planning applications are determined in accordance with the statutory development plan, unless material considerations indicate otherwise. The planning system is plan led which means that compliance with planning policy is paramount. For Westminster the statutory development plan consists of Westminster's City Plan 2016, the Unitary Development Plan, the London Plan and any neighbourhood plans. The scope of what can constitute a material consideration is very wide, so long as they relate to land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light are not material considerations. It is for the decision maker to decide what weight is to be given to the material considerations in each case.

### **National Planning Policy Framework (NPPF)**

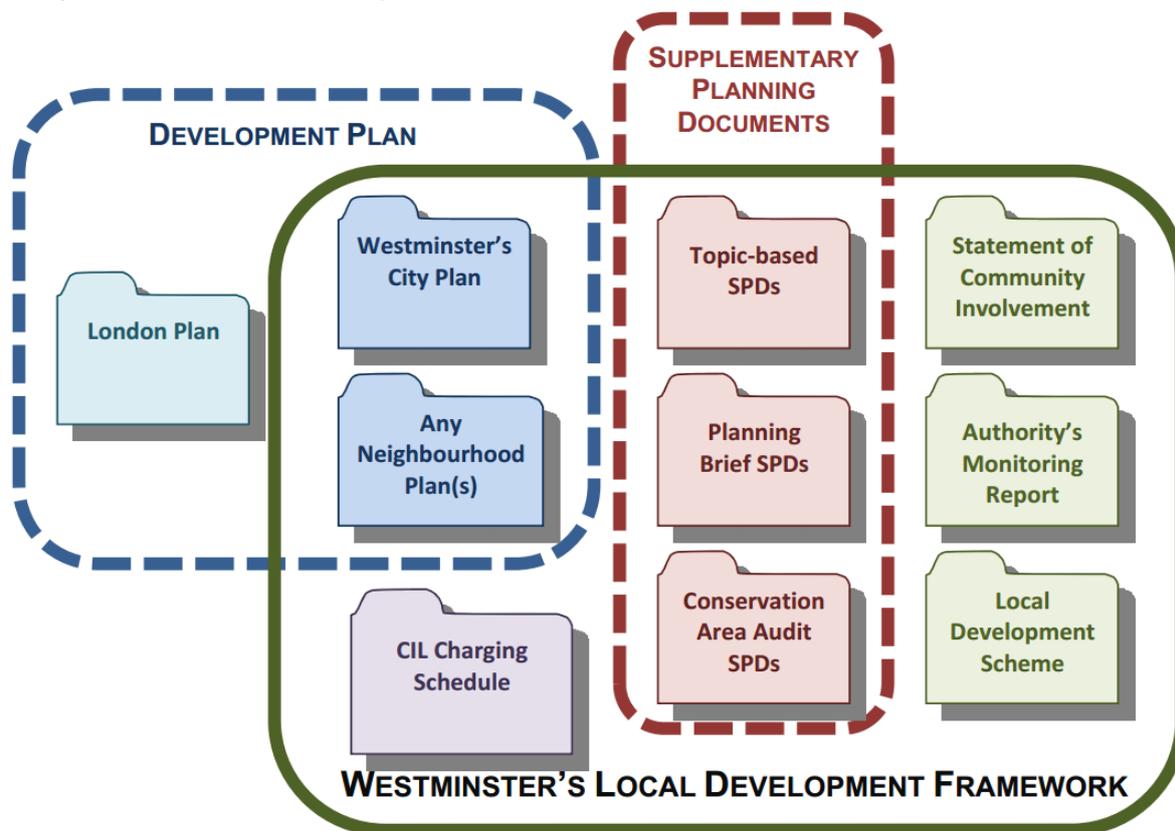
In July 2018, the Government published an updated version of the National Planning Policy Framework (NPPF). This sets out national planning policies for England. It makes clear that the purpose of planning is to help achieve sustainable development, covering economic, social and environmental aspects. It covers both plan-making and the taking of planning decisions. The policies in it must be considered in preparing Local Plans and neighbourhood plans and it is a 'material consideration' in deciding planning applications. However, it does not dictate how local and neighbourhood plans should be written or planning outcomes but is rather a framework for their preparation – we must have regard to what it says but can depart from it where there are sound reasons for doing so.

The recently revised NPPF is a shorter document, and again it is strongly focused in favour of sustainable development and the delivery of more housing.

The NPPF is backed by detailed national guidance on topics brought together in National Planning Practice Guidance. This, for example, deals with the specific requirements around securing affordable housing and administration of the Community Infrastructure Levy.

## Westminster's Planning Framework

The diagram below shows the documents which make up Westminster's Local planning policy – each element is explained in more detail below.



### The London Plan

In London the Mayor remains responsible for producing a strategic plan for the capital, in the form of his “spatial development strategy” - commonly known as the London Plan. The London Plan provides London boroughs with an overarching framework for their local plans, helping them to tackle strategic as well as local issues effectively. Local Plans in London need to be in line with (in ‘general conformity’ with) the London Plan, which also guide decisions on planning applications by London borough councils and the Mayor as it forms part of the statutory development plan. Policies in the London Plan are therefore a material consideration in the determination of planning applications. The current London Plan was adopted in 2016.

There have been several major changes to the London Plan following the election of the new Mayor. Consultation of the draft London Plan finished in March 2018 and the examination in public opened in January 2019 and is likely to report in Autumn 2019. It is a material consideration in the determination of planning applications and can be given some weight due to its submission to the Secretary of State for examination in January 2019. The Mayor has produced several supplementary planning documents and of relevance to Westminster are

- Culture & the Night-time Economy Nov 2017
- Affordable Housing & Viability August 2017

### Major Applications Referred to the Mayor

Several major planning applications are referable to the Mayor (developments over 30 m in height, over 150 residential units or on Metropolitan Open Land). The initial consultation which is undertaken when the application is received is known as Stage 1 referral and is referenced in Committee reports. Following the Committee Council resolution, the application is referred to the Mayor known as Stage 2. The Mayor has 14 days to produce his Stage 2 report and can either be content for the Council to issue approval, or he can direct refusal or call in the application to be determined by the GLA. The mayor does exercise this power.

### **Westminster's Local Plan**

Local Plans are the key documents through which local planning authorities can set out a vision and framework for the future development of the area, engaging with their communities in doing so. Local Plans address needs and opportunities in relation to issues such as housing, the local economy, community facilities and infrastructure. They should safeguard the environment, enable adaptation to climate change and help secure high quality accessible design. The Local Plan provides a degree of certainty for communities, businesses and investors, and a framework for guiding decisions on individual planning applications.

Producing the Local Plan is a shared endeavour – led by the Council but in collaboration with local communities, developers, landowners and other interested parties.

Westminster's local plan is the City Plan which was adopted in November 2016. In conjunction with the City Plan saved Unitary Development Plan (UDP) policies (adopted 2007) are also used to determine planning applications. The saved UDP policies are increasingly outdated and must be replaced by up-to-date detailed development management policies – if not there is the risk that they will be given less weight by inspectors at appeal or by the Mayor and ministers in taking planning decisions affecting Westminster.

### **Draft City Plan**

The City Council is currently working on a review of its City Plan. Informal consultation on the first draft of the City plan 2019-2040 took place between 12.11.2018 and 21.12.2018. Following this informal consultation, any representations received are being considered and the draft plan will be revised in advance of formal consultation under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012. Given the very early stage in the consultation process, the policies in the emerging draft City Plan are given limited weight now. It is anticipated that the Regulation 19 version of the new City Plan will be issued in June 2019.

### **Neighbourhood Plans**

Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. Communities can prepare plans with legal weight as part of the statutory development plan and can grant planning permission for the development they wish to see through a 'neighbourhood development order'.

In Westminster there are 20 designated Neighbourhood Areas, The Knightsbridge Neighbourhood Plan has been recently adopted (December 2018) and is a material

consideration in determining planning applications in Knightsbridge Neighbourhood Area. You will see reference to Neighbourhood Plans in the committee reports.

### **Supplementary Planning Documents**

Supplementary Planning Documents (SPDs) expand on adopted planning policy to provide more detailed information that can be contained in the policies themselves. They give guidance to the public, applicants and developers when making planning applications. In some cases they may set out how policies apply to a particular site.

SPDs do not have the same status as the policies within the Development Plan but have been subject to public consultation and are taken into account as material considerations in dealing with planning applications. They have to be consistent with adopted local plan policies and cannot be used to make new policy.

Westminster has adopted a number of SPDs which are either topic based (e.g. basement development, design matters, statues and monuments etc), conservation area audits or planning briefs. 28 of Westminster's 40 adopted supplementary documents (some are called supplementary planning guidance, or SPGs) were published prior to the adoption of the Unitary Development Plan in 2007 and could therefore be challenged for their relevance. A review of the SPD's will be carried out this year. However, they can be referred to in Committee reports.

### **Statement of Community Involvement**

The Statement of Community Involvement (SCI) sets out how the council will involve the community in the planning process. It sets out the principles for consultation on planning policy documents and for development. For the purposes of Committee reports, consultation procedures and obligations are carried out on Planning proposals in line with legislation and any additional requirements from the SCI.

### **Material Planning Considerations**

This section examines what you should, and should not, consider when deciding planning applications.

In addition to the development plan, it is very important that any other 'material considerations' are considered. The case law on what is or is not 'material' under the planning acts is complex, and officers will give guidance on these matters in reports and at Committee.

Nevertheless, there are some issues (prevention of loss of residential accommodation, protection of historic buildings) where the Secretary of State and the Courts recognise that there should always be a strong presumption in favour of the policy as they are clearly interests of importance. Below are some notes on some of the matters that may arise:

### **National Planning Policy and Guidance.**

The Government's planning policies for England are set out in the revised National Planning Policy Framework (NPPF). The NPPF essentially introduced a presumption in favour of sustainable development and makes it clear that the Government expects planning applications to be granted unless there are very good reasons to the contrary. It provides a framework within which local people and their councils can produce their own

local and neighbourhood plans, which reflect the needs and priorities of their local communities.

### **Third Party Interest.**

Planning is concerned with protecting the public interest, and not with the protection of the private interests of one person against the activities of another. For example, the effect of a proposed development on a neighbouring property in terms of the light it receives as a result, or the privacy of the occupiers, is a valid planning consideration but judged on the basis of fact and degree as it relates to the quality of the community's living environment. However, the financial implications for the neighbour in terms of the value of their property or the effect of any competition on their business, are not valid planning considerations.

### **Moral Considerations.**

It is not acceptable in law to refuse permission for a use on the basis of a moral objection. Permission could, however, be refused should the use be contrary to a planning policy that aims to protect the character and function of an area. Thus, a betting shop or a sex shop cannot be refused purely claiming it is not considered to be a desirable use, nor claiming there are already several others nearby. However, if a proposed betting office would displace a use that serves a useful local function or would lead to an imbalance in the range of shops and services that is detrimental to the character of the area, then refusal could possibly be sustained because they are embedded in the policy framework

Note that uses which may provoke objections on moral grounds e.g. sex shops, also require licences from the Licensing Sub-Committee where wider issues may be considered.

### **Financial Considerations**

This is most likely to arise when applicants propose to offer less affordable housing than our policy sets out to achieve. Our usual practice is to commission an independent viability appraisal. Recommendations to committee will be based on the outcome of this independent study. If you wish to see the full viability reports, please contact the presiding/presenting officer prior to the committee meeting.

The City Council requires that applicant's viability assessment should be prepared on the basis that it will be made publicly available other than in exceptional circumstances. A redacted version is submitted and uploaded on our website.

Financial considerations are gaining in prominence as the NPPF urges a positive approach to economic growth and the Mayor is also carrying out a second viability assessment on Stage 2 referrals and introducing post viability reviews on major schemes. There is a fine balance to be reached in respect of applications which raise viability issues.

### **Personal Considerations.**

The identity of a developer or occupier is not usually a material consideration as planning permission relates to the property and normally continues whoever owns or occupies that property. Personal circumstances are sometimes put forward in support of planning applications, where it is argued that serious personal hardship will result if permission is refused.

In the case of change of a use, it may be appropriate to take considerations of severe personal hardship or very special circumstances into account. A change of use can be a temporary arrangement and permission, in exceptional circumstances, can be given specifically to an individual, or for a specified time, to expire when that person no longer requires the property for that purpose. In the case of personal permissions, when the named person leaves the property, it has a 'nil' use (i.e. any future use requires the benefit of planning permission). Temporary and personal permissions should be used with care as it is often difficult to 'recover' the original use or argue that continued use (or use by another person) would be harmful.

These considerations will be fully explained in Committee reports.

### **Consistency of Decisions**

The Committee must be consistent in the decisions it takes on similar cases in similar circumstances. Planning authorities must behave equitably between applicants and must be seen to do so. Personal circumstances would need to be very exceptional to justify treating similar applications differently.

Inconsistent decisions can lead, at the very least, to an appeal being upheld, or the award of costs against the local authority for acting unreasonably. (More advice on costs at appeal is given later in this guidance note). In extreme cases, the decision may be quashed in the Courts or be revoked by the Secretary of State, with the payment of compensation to the applicant.

Any previous relevant planning decisions made in respect of the site or on nearby similar properties should be considered, as should relevant appeal decisions.

### **A Summary of Dos and Don'ts**

It is important to remember that the Committees are meetings held in public. There will be an audience with applicants and objectors present to listen to the discussion of their application, and notes may be taken of the proceedings. The applicant, their agents, local amenity societies, residents and Ward Councillors can now register to speak at the committee meetings. The meeting is also recorded. The Committee meetings will be live streamed shortly, and therefore it is important that meetings are conducted in a professional manner. Well conducted planning Committees provide confidence to residents and applicants to invest in the borough as they are symbolic of robust decision making.

The substance of the discussion could be relevant in an appeal against the decision or a legal challenge. Issues discussed may also be referred to the Local Government Ombudsman if there is a charge of maladministration. In extreme cases, there could also be claims of wilful misconduct by Members. If upheld, such charges can lead to personal surcharge and disbarment from public office.

Here are the key dos and don'ts:

**DO HAVE REGARD TO:**

- **The Development Plan (i.e. the City Plan /UDP and Regulation 19 version of City Plan 2019 and existing and emerging London Plan and adopted neighbourhood Plans.**
- **Central Government guidance**
- **Other material considerations set out in the report.**
- **Relevant comments made by residents and other consultees- where they raise legitimate planning grounds/ degree of harm**
- **Consistency of decisions**
- **Giving clear planning reasons for overturning an officer's recommendation**
- **Giving clear reasons for an application's deferral and thereafter its decision-making route**
- **Declaring any interests, you may have that could affect your impartiality**

**DO NOT HAVE REGARD TO:**

- **Matters raised in representations that are not pertinent to planning such as loss of property values or covered by other legislation**
- **Whether the application is retrospective**
- **Other uses that would be preferred\*\***
- **Matters covered by other legislation such as licensing (although there will be overlaps)**
- **Moral considerations**
- **The identity of the applicant (in most cases)**
- **Private interests such as party wall matters, disputes between owners, (unless coinciding with the public interest)**

\*\* Other uses you would prefer to see are not material considerations. You must judge the submitted application on its own planning merits.

**IN CONSIDERING APPLICATIONS WHERE A DECISION WAS PREVIOUSLY DEFERRED BY COMMITTEE, DO HAVE REGARD TO:**

- **Only those matters for which the application was deferred – generally it will not be appropriate to re-open matters that were previously considered and agreed by an earlier committee**

- **New representations received, particularly those that relate to the matters for which the application was deferred**
- **Any new matters raised as a direct result of a revised proposal**



St James's Park, SW1

## 6. CONDITIONS IMPOSED ON PLANNING PERMISSIONS

Local authorities have the power to impose such conditions as they think fit on planning permissions to make otherwise unacceptable development acceptable. Such conditions must, however, comply with the requirements of the National Planning Policy Framework and the associated advice on the use of planning conditions in the Government's Planning Practice Guidance. Planning conditions should only be imposed where they are:

**Necessary** – would the development be unacceptable without the condition?

**Relevant to planning** – the condition must relate to planning objectives and be within the scope of the permission to which it is attached. It should not be used to control matters which can be regulated under other legislation.

**Relevant to the development to be permitted** – the condition should directly relate to the development that is the subject of the permission. It is not, for example, acceptable to use the opportunity of a planning permission to obtain some improvement which is not necessitated by the proposed development.

**Enforceable** – a condition should not be imposed if it cannot be enforced by the local authority: e.g. where it would be impossible to detect a contravention or remedy any breach of condition, or where it concerns matters over which the applicant has no control).

**Precise** – the condition should be clearly worded so the developer is in no doubt as to what must be done to comply with it. Qualitative terms such as 'tidy' or 'nuisance' require interpretation.

**Reasonable in all other respects** – a condition should not be so restrictive that it nullifies the benefit of the planning permission or places unjustifiable/disproportionate burdens on the applicant: e.g. one that imposes unrealistic opening hours. Conditions that require liability for works such as maintenance would also be unreasonable.

It must always be remembered that applicants can appeal to the Secretary of State against the imposition of any condition, so care should be taken that conditions meet all the above tests.

The City Council uses many standard conditions and informatives and if you require any further information please contact the Team Leader.

You may also see reference to a condition (known as a 'Grampian Condition') that prevents any works commencing until appropriate arrangements are in place to secure the agreed planning benefits from a Section 106 Agreement. To comply with the requirements of the condition, the applicant will usually have to complete a Section 106 agreement to discharge this condition prior to starting works on site.

From 1 October 2018, any Pre-Commencement Condition now needs the applicants' written agreement and they are given 10 days' notice. If an applicant fails to agree to a pre-commencement condition, we can refuse planning permission. You will see reference to these pre-commencement conditions in the Committee reports

## **7. PLANNING OBLIGATIONS (SECTION 106 AGREEMENTS)**

### **Introduction**

A planning obligation can involve a legal agreement between the Council and the applicant (and others) or can be offered by the applicant unilaterally. It secures some additional works or other benefits **that are required to make a development proposal acceptable** and which, cannot be secured by a planning condition. They may **prescribe** the nature of the development, **compensate** for loss or damage created by the development; or **mitigate** a development's impact.

The legal mechanism for achieving planning obligations is set out in Section 106 of the Town and Country Planning Act 1990.

Where planning permission is granted for development that includes planning obligations, permission is granted subject to a 'Section 106 legal agreement', which ensures that the obligation is provided. Planning permission is therefore not issued in these cases until that Section 106 has been completed. An obligation is a charge on the land and is enforceable on successors in title to the land.

Advice on the use of planning obligations is provided in the National Planning Policy Framework and in the planning obligations section of the Government's Planning Practice Guidance. The advice makes it clear that the circumstances where obligations will be sought should form part of the development plan. Planning obligations should only be used where it is not possible to address unacceptable impacts of the proposed development by imposing conditions. Planning obligations should only be sought where they are:

1. **Necessary** to make the proposed development acceptable in planning terms.

2. **Directly related** to the proposed development.
3. **Fairly and reasonably related in terms of scale and kind** to the proposed development;

So, for example, under test 3 it would be reasonable that a developer be required to pay for the upgrading of infrastructure that serves the development, but the payment should be related to the degree to which the development would benefit from the upgrading.

The obligations offered may be considered insufficient, and therefore the application may be considered unacceptable on legitimate planning grounds – its failure to satisfy policy requirements, or to appropriately mitigate its impact. However, the NPPF requires that account should be taken of market conditions and that planning obligations should be sufficiently flexible to prevent planned development being stalled.

**The offer of planning obligations cannot make an unacceptable development proposal acceptable.** The form and extent of the obligation is assessed as part of the development proposal. Occasionally, obligations are offered that go beyond what is strictly necessary or directly related to the development proposal. In these circumstances the obligation can, so long as it has some relationship to the development proposed, be accepted. However, it should not be given weight when assessing the merits of the development proposal.

It follows, based on the published advice, that planning obligations should not be viewed as a general opportunity to gain some benefit unrelated to the development in return for a grant of planning permission.

The Council will be updating its Supplementary Planning Document on planning obligations in the light of the new draft City Plan and central government advice in the new NPPF. It is most important for the integrity of the planning system and robust decision making that all obligations secured are dealt with in an open and impartial manner.

### **Acceptable Planning Obligations**

These are examples of items normally accepted as planning obligations:

- (i) The environmental improvement of an area or building outside the development site.
- (ii) The dedication of land or facilities for public recreation, cultural or social use, e.g. areas of public open space, sports facilities or community uses.
- (iii) The provision of light industrial floorspace to be safeguarded in perpetuity for this use, and not to change to office use. (Both uses are normally in the B1 Use Class).
- (iv) The restoration of a listed building or one contributing to a conservation area, over and above the normal maintenance works expected from any property owner.
- (v) The provision of affordable housing.
- (vi) employment training/contribution.

By the time an application comes before Committee, negotiations will have been undertaken to secure the most appropriate development, and, where appropriate, benefits

which are related to the development. The weight to be given to these aspects will be addressed in the report. The report will describe the type of obligation offered, and whether it is considered to satisfy the relevant planning policies.

If you are not satisfied with obligations negotiated by officers you may wish to instruct us to negotiate for more, or different, benefits. **However, it is essential that all negotiation for obligations have regard to Government advice and Development Plan policies.** The applicant has the right to appeal against non-determination and, as with appeals against refusal of planning permission, the City Council is at risk of an award of costs if it has acted unreasonably (see Section 8). The City Council should also be seen to be taking a consistent approach to the application of its policies. If either Members or officers are considered to have acted unlawfully or improperly, then there is the risk of an Ombudsman investigation resulting in costs against the City Council and/or individual Members. In exceptional cases aggrieved third parties could seek a judicial review to have the Council's decision quashed.

**Here are the key dos and don'ts.**

<b>DO:</b>
<ul style="list-style-type: none"><li>• <b>Ensure that the obligation is clearly related to the development</b></li><li>• <b>Ensure that the scale of the obligation reflects the scale of the development (it is unreasonable to expect wide scale environmental benefits in relation to a minor scheme)</b></li><li>• <b>Ensure that correspondence relating to the obligation is clear in terms of what is on offer and is available for public scrutiny</b></li><li>• <b>Ensure that the obligation is linked to an agreed programme of works for which there is a commitment to implement (e.g. the obligation should not be in the form of a financial contribution unspecified in purpose)</b></li></ul>

<b>DO NOT:</b>
<ul style="list-style-type: none"><li>• <b>Deal with obligations in a way that is not easily accessible to public scrutiny</b></li><li>• <b>Accept an offer of a contribution of money to the Council for unspecified works</b></li><li>• <b>Approve an unacceptable scheme purely to achieve the obligations on offer</b></li><li>• <b>Insist upon obligations when a scheme is clearly acceptable without them - in such circumstances the benefits can be requested but not insisted upon</b></li></ul>



Portland Mews, Soho W1

## 8. APPEALS AND AWARDS OF COSTS

An applicant can lodge an appeal to the Secretary of State against the Council's decision to refuse planning permission or to impose conditions on a planning permission. has a good record of defending the Council's decisions and overall more than 69% of appeals are dismissed

In any appeal, an appellant may make a claim for costs against the Council. Costs may be awarded where a party has behaved unreasonably, and this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Unreasonable behaviour can be related either to the appeal process or the issues arising from the merits of the appeal and can include unreasonable refusal of planning permission, unjustified imposition of planning conditions, unreasonable issue of an enforcement notice or in relation to how the application or enforcement case was handled. A full or partial costs award may be made.

The Council may also seek costs from appellants if they have acted unreasonably and caused the Council unnecessary expense. For example, the Council may seek costs if an appellant pursues an appeal where it was clear that there was no chance of success. Costs may also be claimed if an appellant pulls out of an appeal at a late stage, where the Council has incurred significant expense in preparatory work.

In addition, an award of costs may be made by an Inspector or the Secretary of State on their own initiative if they consider that one party has behaved unreasonably resulting in unnecessary expense and another party has not made an application for costs against that party.

Advice on appeals and award of costs is available in the Appeals section of the Government's Planning Practice Guidance.

## 9. LIST OF CONTACTS

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## Appendix 1- Background to Planning

### Development

Planning permission is needed for “development”. Development is defined in the Planning Acts as: 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.' Thus 'development' can take the form of either physical works to a building or land, or a change of use of the building or land.

While this definition may seem relatively straightforward there are areas of uncertainty and the legislation gives further guidance. In particular, it makes clear that only works that affect the external appearance of a building require planning permission. Also, it allows people to use their homes for any purpose connected with its residential use. For example, this allows people to work from their homes without obtaining planning permission, but certain restrictions apply. The residential unit must not be divided into more than one unit and the main residential purpose and character of the dwelling must be maintained. Until 2014 demolition in a conservation area required conservation area consent, but this has been abolished, and demolition is dealt with by the planning permission.

If someone is unsure whether their proposal constitutes development, they can apply to the Council for a formal determination. This is known as a Certificate of Lawfulness.

To simplify the process further, the law allows a whole range of minor development to take place without the need for planning permission. These exemptions from planning control are set out in the General Permitted Development Order 1995, which sets out categories of 'permitted development', and the Use Classes Order 1987. Both orders have been amended on several occasions since they were originally published.

### Permitted Development

Some types of development may already be permitted nationally, and for these there is no need to apply for planning permission. Permitted development rights are, however, typically subject to conditions and limitations that control development impacts. If development proposed does not meet with the conditions and limitations of permitted development, then it is necessary to apply to the local planning authority for planning permission. We cannot apply the Council's adopted planning policies in dealing with certificates of lawfulness, it is a straight forward assessment is the scheme lawful or not.

Several new permitted development rights have been introduced in recent years to boost housing supply and enable appropriate development to take place more quickly. The Government introduced in May 2013 a number of prior approvals, these include larger householder extensions affording greater freedom for homeowners to improve and extend their properties without the need to apply for full planning permission (subject to appropriate engagement with neighbours). The Government also introduced the prior approval regime which covers a variety of different changes of use for example change of use of offices to residential use, shops/restaurants to residential use, and temporary changes of use for a 2 year period.

The Government in the Chancellors Budget speech announced further changes to prior approval regime. An update of the most recent changes which came into force at the end of May 2019 have been circulated to Members. These changes made the larger householder

extensions permanent, extending temporary changes of use from 2 to 3 years and now includes some Class D1 uses and removing the permitted development rights for telephone boxes.

There is growing opposition to the prior approval rights which allow offices to be converted into flats, as such schemes do not have to provide affordable housing, standard of accommodation and anti-social behaviour. Westminster has an Article 4 that covers offices inside CAZ which removes these permitted development rights.

**Article 4 Directions**

An Article 4 Direction is a direction under Article 4 of the General Permitted Development Order which enables the local planning authority to withdraw specified permitted development rights across a defined area. This would bring these types of development within the control of the planning process. There are several Article 4 Directions in place in Westminster – for example to limit basement development, prevent the change of use of shops (A1 Use Class) to financial and professional services (A2 Use Class) in the Core Central Activities Zone, prevent changes of use from offices to residential in CAZ and minor alterations in certain conservation areas/streets such as the Queen’s Park Estate.

**Use Classes**

The Use Class Order defines several groups of uses that are sufficiently similar in terms of their impact on the local environment that a change of use within a class, although it may be significant, does not need planning permission. The major Use Classes which are commonly found in Westminster are:

<b>A1</b>	<b>SHOPS</b>	<i>Chemist, grocer, bakers, butcher, hairdresser, ticket/travel agency, off licence, cold food take-away (e.g. a sandwich shop), post office.</i>
<b>A2</b>	<b>FINANCIAL AND PROFESSIONAL SERVICES</b>	<i>Bank, building society, estate agent, betting shop.</i>
<b>A3</b>	<b>RESTAURANTS AND CAFÉS</b>	<i>Businesses where the primary purpose is sale of food and drink for consumption on the premises.</i>
<b>A4</b>	<b>DRINKING ESTABLISHMENTS</b>	<i>Pubs, bars, wine bars.</i>
<b>A5</b>	<b>HOT FOOD TAKEAWAYS</b>	<i>Businesses where the primary purpose is sale of hot food for consumption off the premises.</i>
<b>B1</b>	<b>BUSINESS</b>	<i>Office, light industrial, hi-tech studio.</i>
<b>B2</b>	<b>GENERAL INDUSTRIAL</b>	<i>General industrial processes</i>
<b>B8</b>	<b>STORAGE &amp; DISTRIBUTION</b>	<i>Warehousing or other storage, premises where goods are stored prior to distribution.</i>
<b>C1</b>	<b>HOTELS</b>	<i>Hotels, boarding houses but not hostels.</i>
<b>C2</b>	<b>RESIDENTIAL INSTITUTIONS</b>	<i>Nursing home, residential school, hospital.</i>
<b>C3</b>	<b>DWELLING HOUSES</b>	<i>Flats, houses, or 6 people living together as a single household (including a household where care is provided for residents).</i>
<b>D1</b>	<b>NON-RESIDENTIAL INSTITUTIONS</b>	<i>Medical/health centre, crèche, day nursery, school, museum, library, exhibition hall, public worship</i>

D2	ASSEMBLY AND LEISURE	<i>Cinema, concert hall, bingo hall, dance hall, swimming bath, gymnasium.</i>
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There are also certain uses that are specifically excluded from any use class, such as casinos, night clubs, hostels, theatres, amusement arcades, petrol stations and car showrooms. These are known as ***sui generis*** uses. Wholesale showrooms (such as the clothing showrooms in East Marylebone) are also treated as *sui generis* uses.

As already mentioned the Permitted Development Order allows some changes of use without the need for planning permission. For *sui generis* uses, there are no permitted development rights.

Many activities do not fall neatly into a Use Class. For example, there is a 'grey area' between a Class A1 sandwich bar and a Class A3 café. To fall within Class A1, the sandwich bar must sell primarily cold food for consumption off the premises. However, a limited proportion of hot food sales, or a few tables and chairs on the premises would not necessarily take the use outside the retail Use Class. There are no hard and fast rules determining where to draw the line deciding whether a use is either A1 or A3 or indeed a mixed use falling into neither class. Many other catering activities will be a mix of Classes A3, A4 and A5. Each proposal of this kind needs careful assessment, considering whether one activity is very dominant, with other activities being 'ancillary', or whether the use is a mixed one falling outside any use class.

Thus, it is not always possible to control a change of use that may be viewed as undesirable. For example, the change of a local food shop or a post office to a coffee shop (as all uses fall within Class A1).

### **Certificates of Lawful Development**

There are three types of Certificates of Lawful Development. The first refers to development that has already been carried out without planning permission. A Certificate of Lawfulness of Existing Development must be granted when, by the length of time the development has existed, it has become lawful. That is, the planning merits cannot be considered. In the case of building works or residential uses, the development becomes lawful after four years. For all other uses, the time is ten years

In certain circumstances, it may not be clear whether planning permission is required for a development. The Certificate of Lawfulness of Proposed Development enables an applicant to seek a formal view on the need for making a planning application. The certificate would be granted where the development proposed does not require planning permission. Again, there is no assessment of the merit of the development proposed: the procedure is restricted to assessing only whether permission is required.

There is also a certificate of lawfulness which relates to very minor works to listed buildings which will not affect the character of the listed building as a building of special architectural and historic interest and therefore does not require consent and not liable to any enforcement action.

### **Works to Trees**

Consent is required for any works to trees covered by a Tree Preservation Order (TPO). In conservation areas, 6 weeks' notice must be given to a local authority before works to

trees are undertaken, thus giving the City Council the opportunity to consider making a TPO.

**Neighbourhood Plans**

There is significant flexibility in what neighbourhood plans can include – they can involve, for example, just a few policies on design or retail uses or they can be comprehensive plans incorporating a diverse range of policies and site allocations for housing or other development. But they must relate to land use and must be consistent with strategic policies in the local plan.

All neighbourhood plans, and orders are subject to an independent examination and a vote by the local community in a referendum. Only a neighbourhood plan or order that have been found to fit appropriately with local strategic and national policies and complying with the detailed legal conditions in the Localism Act 2011 and supporting regulations may be put to a referendum. Neighbourhoods with a substantial number of businesses (as many of ours do) are designated as “business areas”; here plans are subject to referendum among businesses as well as residents.

When a neighbourhood plan has passed examination, achieved successful local support through referendum and is then formally ‘made’ by the Local Planning Authority, it will form part of the statutory ‘development plan’ which is used by the local planning authority in deciding planning applications. This status, the community-led nature of neighbourhood planning and extra funding that the community has a degree of influence over through the community infrastructure levy (see below) are real incentives for communities to get involved.

**Community Infrastructure Levy**

The Community Infrastructure Levy (CIL) is a charge on development to help fund infrastructure which the council, local community and neighbourhoods require to help accommodate new growth from development.

The CIL charge is based on the size, location and type of development (although there are exemptions granted for certain categories of development). Westminster’s CIL Charging Schedule is shown below; rates are per square metre for developments where there is an increase of new build floorspace of 100 sq.m or more:

Use	Area		
	Prime	Core	Fringe
Residential (including all residential ‘C’ use classes)	£550	£400	£200
Commercial (offices; hotels, nightclubs and casinos; retail (all ‘A’ use classes and sui generis retail)	£200	£150	£50
All other uses	Nil		

The Council has a detailed governance arrangement to determine how monies collected under CIL will be spent. Under the CIL Regulations there are requirements to divide CIL revenue into “portions”:

Portion	Percentage of receipts	Process
City CIL Strategic Portion	70 - 80%	Spend decided by Council according to its strategic infrastructure priorities. Spend can be anywhere within Westminster - or outside – providing the infrastructure funded is required to support development in Westminster.
Neighbourhood Portion	Currently 15% of CIL collected in respect of development in each neighbourhood capped at £100 per council tax dwelling. This increases to 25% (uncapped) in places <b><u>where a neighbourhood plan is in place.</u></b>	<u>Queen's Park:</u> neighbourhood portion passed to the Community Council who spend it.  <u>Elsewhere:</u> funding <b>retained by the Council</b> and spent by it <b>in agreement</b> with the neighbourhood communities in which development paying a CIL has taken place.
CIL Administrative Expenses Portion	5% of CIL collected	Spend applied to costs of administrative expenses for collection and enforcement in line with legal restrictions on the use of this funding. (NB 4% of the Mayoral CIL collected by the council can also be retained for this purpose).

The Mayor's Community Infrastructure Levy was introduced in 2012 to help finance the Elizabeth line (formerly Crossrail) and is a charge of £80 per square metre on qualifying development in Westminster. Medical, education and affordable housing floorspace is exempt from the Mayoral CIL, all other net floorspace is liable.

Liability to pay CIL arises when planning permission is granted – at which point the council issues a "liability notice" (for this reason the final amount payable is not formally worked out until after permission is granted; we have a CIL Calculator on the council website to help developers work out how much they are likely to have to pay). It is paid within 90 days of development commencing, when a "demand notice" is issued.

The amount of money raised by CIL per year will fluctuate depending on the development cycle/economic conditions, and it is paid on commencement, and not on the grant of permission.

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CITY OF WESTMINSTER

# MINUTES

## Planning & City Development Committee

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Planning & City Development Committee** held on **Thursday 17th January, 2019**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

**Members Present:** Councillors Gotz Mohindra (Chairman), Tim Barnes, David Boothroyd, Susie Burbridge, Ruth Bush, Melvyn Caplan, Peter Freeman, Murad Gassanly, Jim Glen, Elizabeth Hitchcock, Louise Hyams, Robert Rigby, Selina Short and James Spencer

Also Present: Councillor Richard Beddoe (Cabinet Member for Place Shaping and Planning)

#### **1 MEMBERSHIP**

- 1.1 Apologies for absence were received from Councillors Geoff Barraclough, Tony Devenish, Angela Harvey, Guthrie McKie and Tim Roca.

#### **2 DECLARATIONS OF INTEREST**

- 2.1 Cllr David Boothroyd declared that he was Head of Research and Psephology for Thorncliffe, whose clients were companies applying for planning permission from various local authorities. No current schemes were in Westminster; if there were he would be precluded from working on them under the company's code of conduct.

#### **3 MINUTES**

##### **RESOLVED:**

- 3.1 That the Minutes of the Planning and City Development Committee meeting held on 12 November 2018 be approved.

#### **4 PLANNING REVIEW INCLUDING THE INTRODUCTION OF PUBLIC REPRESENTATIONS AT PLANNING APPLICATIONS COMMITTEES**

- 4.1 The Committee received a report from the Director of Place Shaping and Planning providing an update on the programme of work that was underway to implement the findings of the Planning Review undertaken by the Planning Advisory Service (PAS). The Cabinet Member for Place Shaping and

Planning presented the report and the Chief Executive, the Director of Place Shaping and Planning, HR Business Partner and the Principle Planning Solicitor were also in attendance to answer questions.

4.2 The Cabinet Member for Place Shaping and Planning provided an overview of the recommendations, which would facilitate the opportunity for members of the public to make verbal representations at Planning Sub-Committee meetings. The following key features of the proposed procedures and protocols relating to public speaking were highlighted:

- Anyone wishing to speak at Sub-Committee meetings would be required to register their interest in advance;
- The number of persons/organisations permitted to speak would differ according to the type of Sub-Committee being held. For the Planning (Major) Applications Sub-Committee, it was proposed to permit a maximum of two speakers in support of the application and two against. Whilst for Planning Applications Sub-Committees 1, 2 and 3 there would be a maximum of one permitted speaker in support and one against. In addition, it was confirmed that the procedure rules would be amended for all Sub-Committee meetings to enable more than one relevant Ward Councillor and amenity society to address the meeting if required.
- A period of three minutes be permitted for each speaker except where the number of requests exceeds the number of speaking slots. In such circumstances, potential speakers would share the total speaking time between them if a nominated spokesperson could not be agreed upon.
- Practical matters including the running order of speakers and permitting verbal representations only.

4.3 The Committee welcomed the proposals and confirmed the importance of permitting public speaking to improve transparency of the planning process and ensure residents were at the heart of decision-making. The commitment that the proposals would be formally reviewed after six months was also considered important to assess how successful the measures had been and allow any improvements to be implemented if considered necessary. Amendments to the proposed procedures were noted and the Committee was pleased that this included permitting more than one Ward Councillor and Amenity Society to make verbal representations. This was especially considered important on applications that had the potential to affect more than one ward. To assist potential speakers the Committee also requested that guidance be produced to try to ensure any verbal representations were relevant and appropriate.

4.4 The Committee discussed the new proposed approach to pre-application community engagement, which included involving communities at an early stage of the planning process to help influence and shape developments. The Committee noted that work on the initial proposals was still ongoing but welcomed the Council playing a more active role at an earlier stage. It was

considered this would help resolve any potential issues in advance of a planning application being formally submitted.

4.5 In response to questions from the Committee the Cabinet Member for Place Shaping and Planning commented that:

- It was not currently proposed for Neighbourhood Forums to have an allocated speaking slot at Sub-Committee meetings, however this could be reviewed after six months;
- Sub-Committee members would not be permitted to ask speakers questions as the Planning Presiding Officer would be present to answer any technical questions;
- The order of speakers was currently considered appropriate but this would be assessed during the formal six month review of the process;
- Minor amendments to the procedure would be made including any references to 12pm being changed to noon and ensuring officers were also asked to declare any interests at Sub-Committee meetings.

4.6 The Committee welcomed the proposals and agreed that facilitating the opportunity for members of the public to make verbal representations at Planning Sub-Committee meetings was a positive step forward. The procedures and protocols required to allow public speaking to take place were considered efficient, effective and fair and Members were pleased to note that they would be subject to a six-month review of their effectiveness. Subject to the minor amendments to the proposed procedure rules detailed above, the Committee agreed the report's recommendations.

**RESOLVED:**

- 1) That the proposed procedures and protocols to allow for members of the public to make verbal representations at Planning Applications Sub-Committee meetings, as amended, be agreed;
- 2) That the proposed procedures and protocols take effect from the first Sub-Committee meeting to be held at City Hall, 64 Victoria Street, subject to a 6 month review of their effectiveness; and
- 3) That the ongoing work to implement the proposals relating to pre-application community engagement and delegated authority with regards to planning decisions be noted.

The Meeting ended at 7.44pm

**CHAIRMAN:** \_\_\_\_\_

**DATE** \_\_\_\_\_

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# City of Westminster

## Planning & City Development Committee

**Date: 17 January 2019**

**Classification: General Release**

**Title: Planning Review including the Introduction of Public Representations at Planning Applications Committees**

**Report of: Deirdra Armsby - Director of Place Shaping and Planning**

**Financial Summary: The implications will be managed within existing resources.**

**Report Author and Contact Details: Claragh Mulhern [cmulhern@westminster.gov.uk](mailto:cmulhern@westminster.gov.uk)**

### **1. Executive Summary**

1.1 This report presents an update on the programme of work which is underway to implement the findings of the Planning Review undertaken by the Planning Advisory Service (PAS) as reported to Cabinet on 25 October 2018. Cabinet approved the direction of travel to make the planning service more proactive, transparent and focused on the delivery of the Council's City for All vision and corporate priorities. This also involves making it easier for residents to engage with the planning system in Westminster.

1.2 This will involve a major change to the culture and operation of the planning function of the Council under the new structure of the Place Shaping and Planning Directorate. This programme is being supported with internal resources to coordinate the activities and is being supported through the ongoing engagement of the Planning Advisory Service (PAS) in training and staff development.

1.3 Since October 2018, Council officers have held a series of engagement workshops to inform the development of new procedures and protocols within the Council's planning service and how to implement them (see list of engagement workshops at Appendix 1). This report presents an update on the options for implementing these new procedures and protocols. Of significance, this report focuses on the introduction of public speaking rights, the proposals for which are outlined in this report for agreement before they are formally introduced at Planning Applications Sub-Committee meetings from February 2019.

1.4 The report also sets out feedback received and the direction of travel on pre-application community engagement and delegated decision making. These will be fully implemented as part of the wider review.

1.5 The procedures and protocols will be formally reviewed after six months to ensure they are fit-for-purpose, but processes will, of course, be reviewed and amended continually.

## **2. Recommendation**

2.1 Members are asked to consider the contents of this report and:

1. To agree to the proposed procedures and protocols to allow for members of the public to make verbal representations at Planning Applications Sub-Committee meetings as outlined in the Procedure Rules attached at Appendix 2.
2. To agree that these procedures and protocols take effect from the first Sub-Committee meeting to take place when the Council moves back to 64 Victoria Street, subject to a 6 month review of their effectiveness.
3. To note the ongoing work to implement the proposals relating to pre-application community engagement and delegated authority with regards to planning decisions.

## **3. Background**

3.1 A review of Westminster's planning service by the Planning Advisory Service and Local Government Association was undertaken in 2018 to look at all aspects of the decision-making process to ensure it is an independent and impartial process.

3.2 The findings of the review were reported to Cabinet on 25 October 2018. Amongst the key recommendations of this review was the recommendation to facilitate the opportunity for members of the public to make verbal representations at planning sub-committee meetings as part of the overall aim to improve the transparency of the planning process and ensure that residents are at the heart of decision making. In addition, it was recommended that engagement with the local community on pre-planning proposals be enhanced and that the delegation of decision making on planning applications to officers be increased with only the more significant applications being reported to Committee. Cabinet agreed with these recommendations.

3.3 The purpose of this report to the Planning and City Development Committee is to consider the procedures and protocols which need to be put in place to allow for public speaking to take place in an efficient, effective and fair manner. Members are also asked to note the progress on proposals relating to pre-application engagement and delegation arrangements. The recommendations outlined in this report have been discussed with the Cabinet Member for Place Shaping and Planning and the Chairman of Planning Committee.

## **4. Considerations**

### **Verbal representations at Committee**

4.1 In order to inform the recommendations outlined in this report, an assessment of procedures and protocols relating to public speaking at planning committees across the other London boroughs has been undertaken. From this assessment, a number of key matters for consideration were evident:

- i) the deadline for registering interest in speaking at the Committee meeting and the related registration process;
- ii) the number of persons/organisations permitted to speak either against or in support of the planning application being considered;
- iii) the length of time permitted for each speaker to make their case;
- iv) practical matters relating to the Committee meeting including the running order of the speakers and the nature of the representations permitted.

The recommendations outlined below are based on an assessment of common practice at other local authorities and taking into account the feedback received during the stakeholder engagement exercise undertaken between October and December 2018.

4.2 The report to Cabinet on 25 October in response to the PAS review also outlined the need for consideration to be given to support for the public to make effective representations, the management of meetings by the Chairman, the layout of the room, and training requirements for Members sitting on Planning Sub-Committees.

#### Registering an interest in speaking at Committee

4.3 From an assessment of the practices at other London boroughs, it is clear that the majority of councils operate a formal process whereby anyone who wishes to speak at the Committee meeting must register in advance. In some rare exceptions people may arrive at the Committee meeting and declare their intentions to speak however this would be extremely difficult to manage and co-ordinate, with potentially large numbers of people wishing to speak on a single item. As such it is recommended that a formal registration process is established, with a deadline for submissions of interest in speaking.

4.4 Any interested party who has made written representations during the course of the application (either in support or objection) would be notified that the application is due to be reported to Committee and they would be directed to information on the Council's website which would outline the process for registering their interest in speaking at the Committee meeting. The website would include a simple outline of the process with guidance on how to make effective representations and in addition the procedure rules attached at Appendix 2 to this report would also be available to view online. Only those who have made written representations on the application would be notified by the Council of the application being reported to Committee but anyone would have the right to register to speak. The period for registration of interest in speaking would only commence after the case has been listed on a Committee agenda, published online at least 5 working days in advance of the meeting (i.e. any requests to speak included in a written representation on the application or direct contact with officers or Members would not override the formal registration process). The case would not be deferred to another Committee date if an interested party is not available to speak at the Committee meeting however they may ask a representative to speak on their behalf if appropriate.

4.5 There are different approaches across the boroughs with regard to how the registration process is managed; some councils have online forms, some ask people to phone the Council however the majority provide an email address for registration. It is intended that an online form will be provided. In order to register, the objector/supporter or their representative would need to provide the reference number and address of the application, their name and contact details, the date on which the application is due to be reported to Committee, and whether they wish to speak against or in favour of the application providing a short overview of their reasons for requesting to speak.

4.6 With regard to the deadline for registration, many other councils have deadlines either two working days before or the day before the Committee meeting. It is considered, in order to allow sufficient time for Committee and Governance Services to make the necessary arrangements, that a deadline of 12pm on the Friday immediately before the Tuesday committee meeting (i.e. two working days) is enforced. During the stakeholder engagement sessions, it was suggested by some stakeholders that the registration process should be open until 5pm on the day of Committee, however this is not considered to be practical as it will be necessary for officers and potentially the Chairman (depending on the options explored below) to co-ordinate and allocate speaking slots. In addition, officers, Committee Members and the speakers themselves will need to have clarity in advance as to who will be permitted to speak

and for how long. It is therefore strongly recommended that a deadline of 12pm two working days before the Committee meeting is agreed. Committee and Governance Services would subsequently provide the final list of speakers to the Committee Chairman and presiding officer by close of business on Monday (the day immediately before Committee).

#### Number of persons/organisations permitted to speak

4.7 The number of persons/organisations allowed to speak varies across the other London boroughs, ranging from some councils which do not place any maximum limit to others which only allow one speaker for and one speaker against the proposal. Many councils suggest that where more than one or two speakers wish to make representations either in support or against, the interested parties should discuss between themselves and nominate a spokesperson. This is generally either arranged in advance of the meeting, facilitated by the council sharing their contact details with each other, or immediately before the meeting where the potential speakers meet in the committee room 15/30 minutes before the meeting to nominate a speaker. Many other boroughs operate a system where a certain maximum number of speakers are allowed to speak, either for a set limited time or, where more than one or two people register to speak, the time may be shared between them.

4.8 Taking into account practices at other local authorities and the feedback from stakeholders, it is considered that the fairest and simplest system would be to have a specified number of speaking slots (depending on whether the Committee is a Major or a Sub-Committee) where the speakers are allowed to speak for a set limited time. In order to ensure that the wide range of issues which may be at play are fairly represented, it is recommended that the same number of speaking slots is provided for those wishing to speak against and those wishing to speak in favour; however interested parties are encouraged to take a positive approach to their involvement and suggest what changes to the application or conditions could overcome their concerns, in the spirit of achieving a balanced outcome. The applicant would be allowed to speak in support of their application; taking one of the slots for supporters. A number of other boroughs advise that the applicant should only be allowed the opportunity to speak where an objector is speaking against the proposal, however it is considered reasonable to allow the applicant to speak irrespective of whether or not anyone wishes to speak against.

4.9 Standard speaking slots be allocated as follows as follows:

- **Planning (Major) Applications Sub-Committees:** a maximum of two speakers in support of the application (with one of these slots reserved for the applicant or their nominated spokesperson) and two against. In addition, there be a separate slot for the recognised and/or semi-recognised amenity society and a further slot for the relevant Ward Councillors should they wish to speak.
- **Planning Applications Sub-Committees 1, 2 and 3:** a maximum of one speaker in support (normally the applicant or their nominated spokesperson) and one speaker against. In addition, there be a separate slot for the recognised and/or semi-recognised amenity society and a further slot for the relevant Ward Councillors should they wish to speak.

If the number of requests to speak either in support or against the application exceeds the number of public speaking slots outlined above, potential speakers will be encouraged to either nominate a speaker who will make a verbal representation at the Planning Applications Sub-Committee on their common behalf, or to share the total time to be allocated to speaking slots for either objectors or supporters, as the case may be, between them (e.g. at a Major committee where two 3 minute speaking slots are allocated for those speaking in opposition to the application however six people register to speak, they would each be given one minute to speak). The Committee and Governance Services team would contact the relevant parties on the Friday afternoon immediately after the registration deadline and seek their agreement

for their contact details to be shared with the other parties in advance of the meeting to decide on whether they wish to nominate a speaker or share the time between them (this agreement is necessary in order to avoid concerns regarding data protection). The nomination of the spokesperson or clarification that the time is to be shared between the speakers would need to be submitted to the Committee and Governance Services Team by the following Monday at 12pm (i.e. the day before Committee). If the spokesperson were to be nominated or the speaking slots shared immediately before the meeting as in some other authorities, this could result in disagreements about who should represent the group and several potential speakers preparing representations in advance, only to be disappointed by not being allowed to speak or preparing their representations before the meeting only to discover that they have less time to speak.

4.10 Where agreement cannot be reached between the parties on a nominated spokesperson (for example where objectors have different concerns) or for the time to be shared between the speakers; it is proposed that the Chairman, in conjunction with the Presiding Officer, may choose to agree to a random selection process (a ballot) to determine who will speak. It is also recommended that the Chairman should only use his/her discretion to allow more speakers to make representations in extraordinary circumstances such as where an application is of a significantly large scale or highly contentious. Interested parties may also wish to contact their Ward Councillors and request that they make representations on their behalf however if such requests by Ward Councillors are made after the Friday deadline (see 4.11 below) they will need to be submitted directly to the Chairman for agreement.

4.11 In addition to the members of the public being allowed to speak, it is recommended that an additional speaking slot be provided for the relevant local recognised or semi-recognised amenity society to make verbal representations. These organisations are designated statutory consultees in the planning process, are well-organised, have members with in-depth knowledge of their areas and their input is highly valued by officers and Members. It is currently the case that where a local Ward Councillor wishes to speak either in objection to or in support of an application, they may request permission from the Committee chairman. It is recommended that a speaking slot is provided for Ward Councillors who should follow the same procedure as outlined above in terms of registration. Where a Ward Councillor requests that an application relating to their ward is reported to Committee, they must attend the relevant Committee meeting to outline their views.

#### Length of time permitted for each speaker

4.12 The length of time permitted for each speaker varies across the London boroughs. Most allow either two or three minutes per speaker but some advise that a maximum of, for example, five minutes is allowed for objectors to be shared between those who wish to speak (with the result that where five people register to speak, they are given one minute each to speak) whilst others allow up to five minutes for a nominated speaker to speak on behalf of objectors.

4.13 As outlined above, a set maximum number of speaking slots is recommended; the number of speakers allowed depending on the scale of the application. It is recommended that a period of three minutes is permitted for each speaker (except where the number of requests exceeds the number of speaking slots and potential speakers agree to share the total speaking time between them as outlined in 4.9 above).

#### Practical matters including order of events

4.14 The running order of the Committee is outlined in the Procedure Rules attached at Appendix 2 and will, in general terms, not change significantly from the current procedure with the exception of the order of speakers. In brief summary, the following order of speakers is recommended:

<b>Order of Speakers</b>
i) Planning Officer presentation of the case
ii) Applicant and any other supporter(s)
iii) Objectors
iv) Amenity Society (Recognised or Semi-Recognised)
v) Ward Councillor(s) and/or MP(s)
vi) Council Officers response to verbal representations
vii) Member discussion (including questions to officers for clarification)
viii) Member vote

4.15 Only verbal representations should be allowed; it is not considered necessary or reasonable to allow members of the public to use visual presentation material. Representations should pertain to planning issues relevant to the application and should generally reflect the issues already raised in the written submissions made during the course of the application. When the speaker has finished making their representations, they should then re-take their seat in the public gallery (except in the case of Ward Councillors who may sit adjacent to the Committee). The Committee Members may ask questions of the planning officer seeking clarification on certain points and when all speakers have finished, Members will discuss the case and may ask questions of the planning officer before taking a vote.

#### Committee Room Layout and Guidance on the Committee Process

4.16 The PAS review noted that due to the layout and arrangement of the current committee room, the attendees and general public at Committee felt isolated from the Committee Members. The review team also noted that large individual screens blocked the ability to see the Committee Members and there is a lack of basic guidance and information which makes the committee process difficult to understand as an attendee. It is noted that the Committee meetings attended by the PAS team took place at 5 Strand and the layout there is a temporary solution while renovation works are undertaken at 64 Victoria Street. The new chamber at 64 Victoria Street will be laid out to reduce the separation between the Committee Members and public gallery.

4.17 It is also proposed to live-stream and record Planning Applications Sub-Committee meetings and make the coverage available post-meeting. Work is currently underway to identify and procure an appropriate technological solution with these facilities required to be place when the first Planning Applications Committee meeting takes place at 64 Victoria Street following the refurbishment works. Subject to the proposals outlined in this report with regard to public speaking being agreed by Members, it is intended that public speaking at Planning Committees will be introduced as soon as the rooms and technology in 64 Victoria Street are ready for use (planned during February).

4.18 It is proposed to provide improved guidance, for the benefit of members of the public, to explain the committee process and how the Chairman may manage the Committee meeting. The procedure rules attached at Appendix 1 to this report form the basis for this guidance, however it may be simplified and included on the Council's website and at the Committee meeting to help attendees and others to understand the process. This information will form part of a wider programme to review all digital content to improve accessibility for the general public; with the aim of improving the way we explain planning policies and decisions to make them easier to understand.

## **Pre-application Community Engagement**

4.19 The PAS report recommends that the Council develops a new approach to the early involvement of communities in shaping proposals, proportionate to the type of development. Such an approach could be co-ordinated by planning officers, in conjunction with ward councillors, who would be encouraged and supported to play a stronger role in influencing and guiding any developments in their ward at an earlier stage in the planning process.

4.20 Many large developments already benefit from pre-application engagement with the community, yet this is primarily delivered by the applicant in isolation from the Council. It is therefore proposed that the Council plays a more active role in this process in order to identify and in an attempt to resolve any potential issues in advance of the planning application being formally submitted. This will require a revision of the Council's Statement of Community Involvement (SCI) to outline, at the pre-application stage, best practice for developers.

4.21 In addition to the informal engagement, consideration is currently being given to options for more formal meetings or forums where applicants may present their proposals to the local community, Ward Councillors and officers. Feedback on these initial proposals from stakeholders has been mixed, with additional information and clarity on how these 'forums' might be facilitated and resourced required. Concerns have also been raised regarding the pressure on resources of amenity societies as well as officers.

4.22 PAS has been retained to provide further guidance on this subject and a programme of research into best practice at other local authorities is proposed. As such, it is premature at this stage to make formal recommendations and more detailed proposals will be reported back to members as they develop.

## **Delegated Authority**

4.23 PAS recommends that Planning Applications Sub-Committee meetings should focus on major and contentious applications rather than small-scale applications which raise local issues and that such applications should be delegated to officers. Currently, 97% of planning decisions within the Council are already taken under delegated authority by planning officers. The current scheme of delegation to officers allows for most applications to be delegated to officers (with the exception of, for example, strategic or highly contentious applications or Council applications where refusal is being recommended), with officers using their discretion to report applications to Committee depending on the nature of objections received. As such it is not proposed to significantly change the current scheme of delegation from Members to officers in respect of decisions on planning applications.

4.24 Ward councillors will retain their right to call in all planning applications to Committee and will be required to attend the Committee meeting to discuss any concerns about an application in their ward if they have called the application in.

4.25 It is also proposed to explore options for increased delegation to a wider number of planning officers and to delegate the hierarchy of decision making which is currently highly concentrated at a senior officer level. It is proposed that planning officers engage more with ward councillors at the pre-application stage to solve issues, thereby avoiding the need for an application to be reported to a Planning Applications Sub-Committee at the end of the process. Appropriate checks and balances would remain in place with peer review of proposed decisions and escalation controls in the event of certain thresholds being reached with different applications. This will require a comprehensive shift in culture as well as a training and development programme for officers, planning for which has already commenced.

4.26 These proposals will be considered as part of the review of the operating model of the directorate, as the major changes relate to officer processes and management structures. Any changes would be undertaken in consultation with the Cabinet Member for Place Shaping and Planning.

## **5. Financial Implications**

5.1 None

## **6. Legal Implications**

6.1 None

## **7. Conclusion**

7.1 Following an assessment of the procedures and protocols at other London boroughs and taking into account the feedback received during the recent stakeholder engagement sessions, it is recommended that the attached procedure rules be adopted for the facilitation of public speaking at Planning Applications Sub-Committee meetings. Members are also asked to note the ongoing work on facilitating improved pre-application engagement with the community and the review of the delegation arrangements for planning decisions.

**If you have any questions about this report, or wish to inspect one of the background papers, please contact: Claragh Mulhern on x2535**

### **Background Papers:**

1. Engagement sessions undertaken and options appraisal.
2. Planning Applications Sub-Committee Procedure Rules DRAFT.
3. Report to Cabinet on Planning Review dated 25 October 2018 and associated resolution and appendix:  
<https://committees.westminster.gov.uk/ieListDocuments.aspx?CId=130&MId=4784&Ver=4>
4. List of Recognised and Semi-Recognised Amenity Societies:  
[https://www.westminster.gov.uk/sites/default/files/list\\_of\\_amenity\\_societies\\_in\\_westminster2018.pdf](https://www.westminster.gov.uk/sites/default/files/list_of_amenity_societies_in_westminster2018.pdf)



CITY OF WESTMINSTER

# MINUTES

## Cabinet

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Cabinet** held at 7.00pm on **Thursday 25th October, 2018**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

**Members Present:** Councillors Nickie Aiken (Chairman), Ian Adams, Heather Acton, Richard Beddoe, David Harvey, Tim Mitchell and Rachael Robathan

**Also Present:** Councillors Angela Harvey and Gotz Mohindra

**Apologies for Absence:** Councillor Andrew Smith

#### 1 WELCOME

- 1.1 The Leader welcomed everyone to the meeting.
- 1.2 The Leader extended her thanks to Steve Mair, who was retiring, for his outstanding work to the City Council, and the wider public sector, and for leaving the organisation in a better shape than when he arrived.

#### 2 DECLARATIONS OF INTEREST

- 2.1 Councillor Angela Harvey declared a prejudicial interest in respect of item 5 that she is a Board Director of the CityWest Homes.

#### 3 OXFORD STREET DISTRICT - DRAFT PLACE STRATEGY AND DELIVERY PLAN

- 3.1 Barbara Brownlee, Executive Director, Growth, Planning and Housing, introduced the report. She summarised the outcome of engagement with stakeholders since the last Cabinet meeting in July to inform the development of the draft Place Strategy and Delivery Plan. She then outlined the direction of travel and key themes and features that had emerged and were set out in the draft strategy.
- 3.2 Barbara Brownlee informed Cabinet that the Council had commenced works on Phase 1 of the Oxford Street District Programme last week. These works

will address a number of underlying footway and highway maintenance issues in readiness for the opening of the Elizabeth line.

- 3.3 Councillor Richard Beddoe, Cabinet Member for Place Shaping and Planning recommended that Cabinet endorse the draft Place Strategy and Delivery Plan for public consultation. He stated that the case for change on Oxford Street is compelling. The Council had listened very carefully to the views of stakeholders over the summer. He explained that the overall ambition is to strengthen the world renowned status of the entire Oxford Street district. This includes securing the long term future of the retail sector which is facing pressures from online retailers. This will be achieved by enhancing the district as a destination zone with an unrivalled experience and visitor offer.
- 3.4 Councillor Heather Acton welcomed the district wide proposals and considered the scheme to be cohesive. She particularly welcomed the proposals for the 98 bus to continue running along the full length of Oxford Street. She hoped to see more than four bus routes remaining on Oxford Street. Councillor Beddoe advised that Transport for London is responsible for the capital's bus routes and will ultimately make the decision on the routes and frequency of services running along Oxford Street.
- 3.5 Councillor Adams welcomed the proposals which he considered to be bold and ambitious. He stressed the important role that Oxford Street plays in supporting the wider UK economy as well as London. He suggested that the strategy should include additional provision for pedestrians to traverse the area around Marble Arch which was presently quite challenging. Councillor Beddoe agreed this would be a priority.
- 3.6 The Leader thanked Barbara Brownlee and her team for the considerable work that they had undertaken in a short space of time to develop the proposals.

**RESOLVED:** That Cabinet:

1. Endorsed the draft Place Strategy and Delivery Plan for public consultation commencing on 6<sup>th</sup> November.
2. Agreed to delegate authority to the Executive Director of Growth, Planning and Housing and the Director of Place Shaping and West End Partnership to approve the final public consultation materials for approval by the Cabinet Member for Place Shaping and Planning.
3. Approved expenditure of up to £2.5m for the development of the strategy and the project as outlined in section 8 of this report. This will be funded via an Oxford Street/West End budget as per the Capital Strategy approved by Full Council in March 2018.
4. Approved the re-profiling of the existing Oxford Street/West End budget of £2.5m from 2019/20 into 2018/19.

## Reason for Decision

1. The Council believes that the District would benefit from adopting a place-based approach to determine how to deal with the current and future opportunities and issues. Owing to the complexities of the District, a more responsive approach to developing a range of solutions across the area needs to be adopted. The Council supports the need for a mixed use District and one that places strong emphasis on the amenity of its local residential communities. All this is essential if the District is to continue to thrive. The Council has now developed a draft Place Strategy and Delivery Plan for the Oxford Street District.
2. The Council's commitment to the Oxford Street District is to create a long term and ambitious vision for the whole of the District that will strengthen its world-renowned status as a great place to live, work and visit. Its strategy will support the ambition and respond to the big challenges that the District faces, including: a rapidly evolving retail environment; a place that can cater to a greater numbers of people; providing more attractions; and for Oxford Street to be a better neighbour to the wider district. In the wake of strong competition from retail hubs like Westfield; online shopping; increased business rates; Brexit; and interest rates, the retailers and businesses in the district are finding the trading environment very challenging.
3. The Council will take responsibility for delivering an ambitious set of projects that are affordable but also help to bring about a significant change that will help to counter some of the external factors that the District currently faces. The Council recognises that investment in the District is required in order to retain its status as the nation's high street and a world-renowned destination for domestic and international visitors. It is also essential that investment helps to improve the liveability of the district and provide a greater amenity for our residents. On 7th November 2018, Full Council will be asked to approve the Council's Capital Strategy including allocation of £150 million towards the delivery of the final adopted Place Strategy and Delivery Plan. Additional funding to support the delivery of the final projects listed in the draft Place Strategy will be required from other external sources. The coherent and district wide programme will ensure that Oxford Street District strengthens its reputation.
4. The Policy context relating to this report include the Council's City for All and City Plan policies. The draft Place Strategy reflect these policies and will contribute to delivering these over the lifetime of the project. See appendix 2 for the policies and how the Place Strategy will deliver these.

## 4 PLANNING REVIEW

- 4.1 Councillor Richard Beddoe, Cabinet Member for Place Shaping and Planning, introduced the item. He referred to the fact that upon her election as Leader, Councillor Aiken implemented a comprehensive change to the management of the planning system in Westminster. He referred to the independent review of Westminster's Development Management service undertaken by the Planning Advisory Service (PAS) and highlighted that it had concluded that the Council has a robust planning system, however, it is a reactive, development control led service. It also highlighted the fact that whilst the governance and decision making processes are robust, they are not seen as accessible by residents. Councillor Beddoe stated that Westminster City Council needs to be more ambitious and proactive. The review further concluded that there is a need to improve engagement with residents and the wider community in the planning and decision-making process related to development in their area.
- 4.2 Councillor David Harvey advised that a number of applications in his ward could have been resolved much earlier if there had been more engagement with the community at a much earlier stage.
- 4.3 Stuart Love, Chief Executive, referred to the fact that the PAS review found no impropriety or failure to follow guidelines and protocols regarding hospitality. However, the practice of accepting hospitality from planning applicants was found to be excessive and unnecessary. Stuart Love made it clear that it was not the case that all officers in the planning service accepted gifts and hospitality. The Chief Executive advised that he had reviewed the guidance on gifts and hospitality together with the Director of Law and found it to be clear and robust.
- 4.4 The Leader commented that she had taken note of the views submitted by a number of amenity societies in the last few days on the proposed changes. She explained that the purpose of making changes to the management of the planning system in Westminster is to make the process more open and transparent. She considered that residents should have an opportunity to take a more proactive role at an earlier stage in the planning and decision-making process as well as the opportunity to make verbal representations at Planning Applications Sub-Committees. She stated that this will require a significant culture change for staff and those externally who use the planning system. She considered that further work is required to understand how to best implement the new procedures and that views should be sought from all those with a stake in the planning system in Westminster, most notably residents. This was supported by Cabinet.

### **RESOLVED:** That Cabinet:

1. Endorsed the findings and recommendations of the report submitted by the Planning Advisory Service (PAS) and agreed to take the following steps to:

- a) Improve the openness and transparency of the planning system:
  - We will record Planning Sub-Committee meetings and make the coverage available post-meeting;
  - We will live stream Planning Sub-Committee meetings once an appropriate technological solution has been identified and sourced;
- b) Make it easier for residents to engage with the planning system:
  - We will introduce “public speaking rights” at Planning Sub-Committee meetings;
  - We will review all our digital content on the planning process and planning decisions, particularly that included on the council’s website to improve accessibility for the general public;
  - We will improve the way we explain planning policies and decisions to make them easier to understand.
2. Agreed to support resident and ward Councillor participation at an earlier stage of the process, for example in the pre-application stage of major applications and to adopt a new approach to communicating and engaging their views in proposals. Further details are to be presented to Cabinet following further engagement with stakeholders.
3. Directed the Chief Executive, to present detailed plans to increase delegations and review the call-in procedures, in consultation with ward members as appropriate without the need for escalation to Sub-Committee, thereby speeding up the process. The details of the revised delegation and call-in procedures to be developed in consultation with relevant stakeholders and presented to Cabinet prior to submission to the Planning and City Development Committee for approval.
4. Directed the Executive Director of Growth, Planning and Housing and the Executive Director of Policy, Performance and Communications to submit a joint report to Cabinet setting out the detailed proposals for the introduction of public speaking rights following stakeholder engagement for approval by the appropriate decision making body, to be determined in consultation with the Director of Law.
5. (a) Directed the Chief Executive to restate to both officers and members their responsibilities in terms of the Council’s gifts and hospitality policies. This will include emphasising the importance of exercising sound judgement in dealing with all offers of gifts and hospitality. Noted that in terms of the planning service, this will build on the guidance issued in February 2017 regarding Councillor meetings with developers on particular schemes.

- (b) Requested that the Chief Executive and Director of Law refine the wording in the paragraph below to reflect that this should apply to elected Members involved in the planning decision making process. The revised text to be referred back to Cabinet at a later date

Council officers and elected members involved in the planning process must retain a distance from land owners, applicants, agents and community stakeholders, other than at formally arranged visits and recorded meetings linked directly and specifically to the consideration of planning applications, pre applications, or the development of the local plan.

6. Agreed to create a new Place-Shaping and Planning directorate which reflects the ambitious agenda set by the Leader and Cabinet to deliver a City for All, and for the new service to deliver the direction of travel which will be set out in the emerging City Plan.

### **Reason for Decision**

1. The Leader and Cabinet have set an ambitious agenda to change how the Council operates in a number of areas, including, but not limited to planning.
2. The direction of travel is to shift away from a largely reactive and development management focused planning service towards a proactive and strategic approach, guided by the Council's vision and priorities. This will require cultural change throughout the whole system.
3. It will also mean that, should they wish to, residents and others will have the ability to take a clearer and more proactive role in the planning and decision making process related to development in their area. This includes Neighbourhood Forums, Amenity Societies and the general public.
4. Work is ongoing to finalise the City Plan (the Council's Statutory Local Plan) for public consultation in November 2018. The revised City Plan will be streamlined and place much greater emphasis on positive considerations about the type of development that is appropriate in Westminster. The service which implements this policy framework must therefore also be governed by the same principles.
5. These recommendations are supported by the findings of the PAS report.

## **5 EBURY BRIDGE ESTATE RENEWAL - INITIAL REPORT ON DELIVERY OPTIONS**

- 5.1 Having declared a prejudicial interest, Councillor Angela Harvey left the room during the consideration of the item.
- 5.2 Barbara Brownlee, Executive Director, Growth, Planning and Housing introduced the report. She summarised the outcome of a high level appraisal

of the four delivery options for the Ebury Bridge estate renewal reported to Cabinet in July.

- 5.3 Councillor Rachel Robathan reported that an enormous amount of work had been undertaken over the summer by the finance and housing teams. She explained that Cabinet's support was being sought to undertake further engagement with the market and the Community Futures Group. The results of this which would be reported back to Cabinet at a future time. She stated that the Council had made a commitment to residents and tenants that the estate would be regenerated and she reiterated this commitment.

**RESOLVED:** That Cabinet:

1. Agreed to support the initial selection of Council led delivery through the Housing Revenue Account (HRA) and Westminster Wholly Owned Company (WOC) as the preferred delivery option for Ebury Bridge estate renewal.
2. Noted that the HRA/WOC option provides flexibility to amend the tenure mix of the market sale housing, as set out in Scenario 7 approved in July 2018, and to create hybrid delivery options. Engagement with the market will commence as soon as possible to test the feasibility and support for this delivery option and also for potential tenure changes and hybrid delivery options. The Cabinet Member for Finance, Property and Regeneration will then be in a position to confirm the selection of the preferred delivery route.

### **Reasons for Decision**

1. The Ebury Bridge Estate is one of the five priority estates identified in the Council's Housing Renewal Strategy (2010) as needing significant improvement and investment. In line with the Council's City for All objectives, the overarching objective of regenerating Ebury Bridge Estate is to create a comprehensive renewal that brings about physical, economic and sustainable change that creates additional homes and improves the lives of residents, businesses and visitors alike.
2. In July 2018 Cabinet approved a regeneration scenario (Scenario 7) following detailed evaluation and consultation with residents. This report provides the first stage assessment of potential delivery options for that scenario.
3. Council led delivery through the HRA and WOC is viewed as the preferred approach following the high level appraisal described in this report. With Cabinet agreement, this now will be subject to more comprehensive assessment including:
  - consultation with residents and businesses,
  - soft market testing with the development/construction market,
  - further detailed feasibility work by the Council team.

The Meeting ended at 7.35pm

**CHAIRMAN:** \_\_\_\_\_

**DATE** \_\_\_\_\_



# Cabinet Report

<b>Meeting or Decision Maker:</b>	<b>Cabinet</b>
<b>Date:</b>	<b>25<sup>th</sup> October 2018</b>
<b>Classification:</b>	<b>General Release</b>
<b>Title:</b>	<b>Planning Review – Final Report</b>
<b>Wards Affected:</b>	<b>All</b>
<b>City for All Summary</b>	<b>An open and transparent Council with services accessible and relevant to everyone. Ensuring development in the City works best for those living here.</b>
<b>Key Decision:</b>	<b>Cabinet</b>
<b>Financial Summary:</b>	<b>The reduction of one Director post will result in savings that will be reflected in the 2018/19 outturn.</b>  <b>Any further financial impacts will be delivered within budget and reflected in the 2018/19 outturn.</b>
<b>Report of:</b>	<b>Stuart Love – Chief Executive</b>  <b>Barbara Brownlee – Executive Director, Growth Planning and Housing</b>

## **1. Executive Summary**

- 1.1. This report sets out ambitious and wide ranging changes to the Council's Place-Shaping and Planning functions, which will result in a more open, transparent and proactive approach to planning in the city, underpinned by a service and an officer culture focused on delivering the Council's City for All vision. It will therefore also place residents at the heart of the planning process.

- 1.2. Along with the current review of the City Plan and a renewed commitment from the leadership of the Council to ensure that all of its residents benefit from development, the recommendations set out in this report provide a significant opportunity for the planning service to evolve, placing itself in the strongest position possible to deliver both the City Plan and Westminster's wider corporate objectives. It will also lead to best practice and regain and maintain trust in an important public and regulatory service.
- 1.3. This follows a review of the Council's approach to planning initiated by the Leader of the Council and Cabinet at the start of 2018. The review specifically considered the effectiveness of Westminster's Development Planning service, the role of hospitality, the delivery of corporate objectives and outcomes, and the planning committee system and decision-making process.
- 1.4. This review was supported by the Planning Advisory Service (PAS), which is part of the Local Government Association (LGA).

## **2. Recommendations**

- 2.1. To endorse the findings and recommendations of the report submitted by the Planning Advisory Service (PAS) and to take the following steps to:
  - a) Improve the openness and transparency of the planning system:
    - We will record Planning Sub-Committee meetings and make the coverage available post-meeting;
    - We will live stream Planning Sub-Committee meetings once an appropriate technological solution has been identified and sourced;
  - b) Make it easier for residents to engage with the planning system:
    - We will introduce "public speaking rights" at Planning Sub-Committee meetings;
    - We will review all our digital content on the planning process and planning decisions, particularly that included on the council's website to improve accessibility for the general public;
    - We will improve the way we explain planning policies and decisions to make them easier to understand.
- 2.2. To support resident and ward Councillor participation at an earlier stage of the process, for example in the pre-application stage of major applications, we will adopt a new approach to communicating and engaging their views in proposals.

- 2.3. To direct the Chief Executive, in consultation with the Cabinet Member for Place-Shaping and Planning, to recommend to the Planning and City Development Committee to increase delegation and review the call-in procedures, empowering officers to take more delegated decisions, in consultation with ward Members as appropriate without the need for escalation to Sub-Committee, thereby speeding up the process. The details of the revised delegation and call in procedures be reviewed and recommended for decision at the next Planning and City Development Committee.
- 2.4. To direct the Executive Director of Growth Planning and Housing and the Executive Director of Policy Performance and Communications to submit a joint report to the next Planning and City Development Committee setting out the detailed proposals for the introduction of public speaking rights. A target date for the introduction of public speaking rights is set for 1 December 2018.
- 2.5. To direct the Chief Executive to restate to both officers and members their responsibilities in terms of the Council's gifts and hospitality policies. This will include emphasising the importance of exercising sound judgement in dealing with all offers of gifts and hospitality. To note that in terms of the planning service, this will build on the guidance issued in February 2017 regarding Councillor meetings with developers on particular schemes.

Council officers and elected members involved in the planning process must retain a distance from land owners, applicants, agents and community stakeholders, other than at formally arranged visits and recorded meetings linked directly and specifically to the consideration of planning applications, pre applications, or the development of the local plan.

- 2.6. To create a new Place-Shaping and Planning directorate which reflects the ambitious agenda set by the Leader and Cabinet to deliver a City for All, and for the new service to deliver the direction of travel which will be set out in the emerging City Plan.

### **3. Reason for Decision**

- 3.1. The Leader and Cabinet have set an ambitious agenda to change how the Council operates in a number of areas, including, but not limited to planning.
- 3.2. The direction of travel is to shift away from a largely reactive and development management focused planning service towards a proactive and strategic approach, guided by the Council's vision and priorities. This will require cultural change throughout the whole system.
- 3.3. It will also mean that, should they wish to, residents and others will have the ability to take a clearer and more proactive role in the planning and decision making process related to development in their area. This includes Neighbourhood Forums, Amenity Societies and the general public.

- 3.4. Work is ongoing to finalise the City Plan (the Council's Statutory Local Plan) for public consultation in November 2018. The revised City Plan will be streamlined and place much greater emphasis on positive considerations about the type of development that is appropriate in Westminster. The service which implements this policy framework must therefore also be governed by the same principles.
- 3.5. These recommendations are supported by the findings of the PAS report.

#### **4. Background**

- 4.1. Following the election of a new Leader of the Council and Cabinet in January 2017, a number of changes have been implemented regarding the management of the planning system in Westminster.
- 4.2. In February 2017, new guidance was introduced governing how the Cabinet Member for Place-Shaping and Planning and the Chairman of Planning should engage with planning applicants before and after submission of applications. This guidance set out that such meetings must take place with a Planning Officer present and a record of the meeting and any advice given must be made. The guidance also sets out that once an application is submitted any advice provided by the relevant member will be given to the Director of Planning for inclusion in the committee report.
- 4.3. In early 2018, the Leader of the Council instructed the Chief Executive to undertake a review of the planning system as a whole, learning the lessons from a year of operating the new guidance and with a view to ensuring a modern, open transparent planning service.
- 4.4. In May 2018, PAS were instructed to review the operation of Westminster's Development Management (DM) service. PAS was asked to consider the effectiveness of the service, the role hospitality plays, the delivery of corporate objectives and outcomes, and the Planning Committee System and Decision Making.
- 4.5. PAS reported to the Chief Executive and the Executive Director of Growth, Planning and Housing in September 2018 and this report is the Council's response to that process.
- 4.6. A copy of the final PAS report is attached (Appendix 1) and the key findings are summarised below.

#### **5. Key findings**

##### **5.1. A culture change in planning in Westminster**

- 5.1.1. The PAS review notes that:

*"The Leadership of Westminster has an excellent opportunity to change the narrative about planning and with it the philosophy and role of planning. Westminster does not have to go out and seek development and this could have contributed to the balance at Westminster being tilted more towards reacting to and regulating development"*

*than proactively managing and delivering a vision. The 'City for All' strategy and emerging local plan should be the driving forces that communicate to the community and developers a clear vision for Westminster, how it wants to develop and its priorities. Planning should be placed at the front and centre of how that vision is achieved."*

- 5.1.2. In order to seize this opportunity, it is necessary to implement both structural and cultural changes in how the planning function operates.
- 5.1.3. The Council's current planning service is operating from a purely development control perspective in determining applications and not embracing the wider Town Planning role, which provides for, and requires a much greater degree of creativity and proactivity in assessing applications.
- 5.1.4. The Council has a reputation for delivering innovative and high quality services and both officers and Councillors are keen to ensure that the organisation does not 'rest on its laurels' and continues to change and to innovate.
- 5.1.5. For the planning service this includes finding the right balance between its role as a regulator and the transparent promotor of development that will deliver the key outcomes for all of Westminster's communities. Planning policy and its implementation should be the spatial interpretation of the Council's vision, objectives and priorities both for city management and planning.
- 5.1.6. The review encourages the planning service to explore and develop innovative approaches to city centre management and this should include learning from other UK local planning authorities and global centres.
- 5.1.7. The review recommends that Development Management, planning policy, delivery and regeneration be more closely aligned. The planning function has become development control-led and a largely reactive rather than proactive service which is at the heart of delivering the Council's City for All vision.
- 5.1.8. The planning service should provide leadership in terms of the growth and development of the city and therefore it is recommended that the Council create and appoint a strategic place shaping and planning lead to ensure corporate leadership in all key service areas and a joined up approach to this agenda. This would align with the Cabinet Member portfolio created following the 2018 local elections.
- 5.1.9. The Chief Executive, the Executive Director for Growth, Planning and Housing and the Director of Policy, Performance and Communications have been reviewing the structure of the planning function as part of the review process. It is proposed to delete the post of Director of Planning and the post of Director of Place Shaping & WEP (West End Partnership) and to create a new post of Director of Place Shaping and Planning. This new post will have overall responsibility for the council's Development Management function, including development control and policy implementation. The new post will report to the Executive Director for Growth, Planning and Housing with a dotted line to the Chief Executive.

## 5.2. **Planning Decision Making, including the role of Planning Sub-Committees**

- 5.2.1. There is a need to overhaul the planning decision making process to ensure that decisions are made at the right level with regard to the seniority of officers empowered to take decisions as well as the role of Planning Sub-Committees and in the right way with regard to the engagement of the local community in the process.
- 5.2.2. The review found that current planning application assessment and sign-off procedures are rigorous in Westminster's current planning service, but restricted to senior officers.
- 5.2.3. This is understandable in a high profile borough, where legal challenges to process and decisions are more common than in the rest of the country. Notwithstanding this rigour (which often drives consistency and high standards), strong leaders with forthright views on high standards of design and development need to find ways to pass skills down the chain of command to enable more good decisions to be made, more quickly and efficiently.
- 5.2.4. Passing decision-making to frontline officers will also require officers to work closely with ward Councillors and residents to resolve issues as far as practical in the local area and align decision making wherever possible between the views of officers and those of elected Members who have a democratic leadership responsibility for their locality.
- 5.2.5. Joint working between the local community, planning officers and Members at an early stage can ensure that better outcomes are achieved. Even when issues cannot be resolved locally and matters are taken to a Planning Sub-Committee, good communication provides a way of improving understanding of the issues from different perspectives right at the start of the process and will help improve and clarify decisions taken.
- 5.2.6. Delegation and call-in procedures are too loosely defined and this results in cases appearing on committee agendas that the review team felt could have been dealt with elsewhere e.g. a policy interpretation for the discharge of a condition; a case that had no objections and was recommended for approval; issues and questions on one of the Council's own major regeneration schemes which really should have been dealt with rather than progress to committee for a resolution. There were also several other cases including a mansard roof development and basement developments that could have been resolved outside of committee with some flexibility, creativity and little less risk-averse application of policy.
- 5.2.7. The time of Planning Sub-Committees should be reserved for major schemes involving substantial impact on the city as a whole or those schemes with a strategic importance for the city.

- 5.2.8. As such a review is required of the delegation and call in procedures to ensure that officers are empowered to take decisions on a wider variety of applications and at a more junior level. This will create capacity, a more consistent and efficient service for customers, support career development, increase staff confidence and autonomy, and encourage more aligned local decision-making. This would also have the associated benefit of identifying potential efficiency gains and cost savings.
- 5.2.9. This will also free up time for Planning Sub-Committees to consider a smaller number of strategically important applications in greater depth, including the opportunity for “public speaking rights”, thereby making the process more open and engaging for the public
- 5.2.10 The Executive Director of Growth, Planning and Housing and the Executive Director of Policy, Performance and Communications will support the Planning and City Development Committee to develop detailed proposals for the delivery of public speaking rights and other operational arrangements for planning decision making (including staff delegation and committees).
- 5.2.11 This will include consideration of the process for determining who can speak at Sub-Committee meetings, how much time is allocated for speakers, support for the public to make effective representations, the management of meetings by the Chairman, the layout of the room, timings of meetings e.g. day vs. night time and training requirements for Members sitting on Planning Sub-Committees.

### **5.3 Gifts and Hospitality**

- 5.3.1 The review recommends that Councillors and officers only attend formally arranged visits and recorded meetings linked directly and specifically to the consideration of planning applications, pre applications or the development of policy. Attendance at hospitality events is not required to deliver a good and professional service.
- 5.3.2 As noted above, new guidance was introduced in February 2017 which governs meetings held by the Cabinet Member for Place-Shaping and Planning and the Chairman of Planning with planning applicants. This guidance clearly sets out the type of meetings that are appropriate, that officers must be present and take a record of the meeting, including details of any advice provided which in turn must be presented as part of the planning application papers. This guidance was designed to maintain the integrity and the perception of integrity in the planning service, particularly with regard to hospitality.
- 5.3.3 The review found no impropriety or failure to follow guidelines and protocols regarding hospitality. However, the practice of accepting hospitality from planning applicants was found to be excessive and unnecessary. It has become ‘normalised’ in contrast to the practice of most planning services across the country.

- 5.3.4 The review found that the Council fundamentally needs to re-think its stance on hospitality and make sure that all guidance for staff and members is consistent and up to date.
- 5.3.5 Good practice would be for staff and Councillors to retain a distance from land owners, applicants, agents and community stakeholders other than through formally arranged visits and recorded meetings linked directly and specifically to the consideration of planning applications, pre-applications or the development of the local plan. This provides independence and serves to maintain trust in what is a public and regulatory service.
- 5.3.6 Accordingly, it is recommended that the Chief Executive restate to both officers and members their responsibilities in terms of the Council's gifts and hospitality policies. This will include emphasising the importance of exercising sound judgement in dealing with all offers of gifts and hospitality. To note that in terms of the planning service, this will build on the guidance issued in February 2017 regarding Councillor meetings with developers on particular schemes.
- 5.3.7 Senior officers will be expected, and should be able to discuss and provide guidance to more junior members of staff on what is and isn't considered acceptable.
- 5.3.8 Furthermore, all guidance regarding meetings with planning applicants should be revised in line with the wider recommendations of this report.

## **6. Engagement**

- 6.1 As the changes proposed in this report will require a significant culture change for staff and those externally who use the planning system, in order to take the findings of this review forward, further work is required to understand how to best implement detailed new procedures and guidance in practice.
- 6.2 Accordingly, and because the Council is not best placed to determine exactly how the system should work, views will be sought from all those with a stake in the planning system in Westminster, most notably residents via Neighbourhood Forums, Amenity Societies and Residents' Associations as well as the development industry itself. Views will be gathered via an informal engagement exercise to understand the best way to implement the principles set out in this report, most notably with regard to public speaking rights and delegated decision making.

## **7. Financial Implications**

- 7.1 The reduction of one Director post will result in savings that will be reflected in the 2018/19 outturn. Any further financial impacts will be delivered within budget and reflected in the 2018/19 outturn.

## **8. Legal Implications**

- 8.1 The Town and Country Planning Act 1990 provides the local planning authority with a strategic role within the planning system with a statutory responsibility for management of delivery of planning services within its designated area including Development Control and Planning Policy making functions.
- 8.2 Planning legislation and related government guidance requires that the above services are provided in a professional and effective manner, and in particular that the decision making process is robust and transparent.
- 8.3 The Director of Law has considered the proposals set out in this report and is satisfied that they will assist the local planning authority in effectively discharging its statutory duties as set out above.

## **9. Staffing Implications**

- 9.1 The Executive Director of Growth, Planning and Housing and the Director of People Services will undertake any necessary consultation and ring fencing arrangements and ensure an Appointments Sub-Committee is convened to make the necessary member level appointments.

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact:**

**Stuart Love – Chief Executive: [slove@westminster.gov.uk](mailto:slove@westminster.gov.uk)**

**Barbara Brownlee – Executive Director of Growth, Planning and Housing**

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### **BACKGROUND PAPERS:**

**Appendix 1 - Planning Advisory Service Report - Development Management Decision Making and Committee Review (September 2018)**

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**City of Westminster**

## Planning & City Development Committee

**Date: 20 June 2019**

**Classification: General Release**

**Title: Report on Planning Appeals 2018-2019**

**Report of: Deirdra Armsby, Director of Place Shaping and Town Planning**

**Financial Summary: There are no financial implications arising directly from this report.**

**Report Author and Contact Details: Jane Hamilton, Principal Development Planning Officer.**

### **1. Executive Summary**

- 1.1 This report provides background to the appeals process and presents a summary of appeal decisions in Westminster made by the Planning Inspectorate (on behalf of the Secretary of State) in the last financial year from 1 April 2018 to 1 April 2019. It has been prepared to provide an overview of appeals process and performance and consider whether any conclusions can be drawn on how future appeals performance can be improved, particularly in terms of reducing the risk of costs being awarded against the council.

### **2. Recommendation**

- 2.1 Members are asked to note the contents and conclusions of this report.

### **3. Background**

- 3.1 Following refusal of any planning decision (including listed building and advertisement consents), applicants have the right of appeal to the Secretary of State. This includes appeals made against the non-determination of an application that has passed the statutory time period for determination or against the serving of a formal Notice including a Planning Enforcement Notice, a Listed Building Enforcement Notice and a Discontinuance Notice Enforcement Notice. There is no right of appeal for objectors or other third parties, only the applicant.
- 3.2 An independent Planning Inspector is appointed by the Secretary of State to make the decision. Appeals can be dismissed and permission refused for all, some or even different reasons used by the Council. If an appeal is allowed, planning permission, or a related consent is granted, subject to conditions determined by the Planning Inspector. There are several grounds to enforcement appeals including grounds whereby an appellant argues that permission/consent should be granted for the unauthorised works attacked by the Notice. These appeals are in effect the same as

an appeal against a refused planning permission or listed building consent and the policies used to justify the service of the Notice are tested.

- 3.3 There are three types of appeal procedure: written representations, informal hearings and public inquiries. Written representations are the most common, usually used for cases where the planning issues are straightforward and there is limited public interest. Informal hearings consist of a structured discussion, led by the Inspector. Public Inquiries are the most formal, with the parties having legal representation and cross examination of the planning and other expert witnesses.
- 3.4 Appeal decisions are important in monitoring quality of decision-making and testing effectiveness of policy. The Secretary of State uses the percentage of decisions overturned on appeal as an indicator of the quality of decisions made by planning authorities and alongside the speed of decisions, this is used to decide whether to designate a local planning authority as being poor performing.
- 3.5 When an application is refused, the reasons for refusal need to be clear, evidence-based and linked to Development Plan policies, otherwise there is a risk that the decision could be overturned on appeal. The same is true for the various forms of Notices. If the Council is deemed to have acted unreasonably, there is a risk of an award of costs against the Council irrespective of the appeal decision itself. A costs award can relate to the full or partial cost of the appellant's costs in making the appeal, dependent upon the nature of the unreasonable behaviour and the extent to which this has resulted in the appellant incurring unnecessary costs in making the appeal. Where an appellant has acted unreasonably during the appeal process the Council can also seek a full or partial award of costs.
- 3.6 Appeal decisions are also important as part of the planning history of a site and a material planning consideration when determining any subsequent applications. An appeal decision can indicate how a development could be amended to make it acceptable. Appeal decisions can also be helpful in testing the wording of current policies and indicating where future changes could be made to improve policies or prevent unintended consequences, for example in preparing the new City Plan or Supplementary Planning Documents. Planning decisions always involve a careful balancing of the issues. Understanding where Inspectors place weight on different policies, material planning considerations and their interpretation of the National Planning Policy Framework (NPPF) can help to improve local decision making.

#### **4. Overview of Appeal Decision 2018-19**

- 4.1 During the financial year between 1 April 2018 and 31 March 2019, **191** appeal decisions were received from the Planning Inspectorate. Of these:
- **127** were dismissed.
  - **4** were part dismissed/ part allowed.
  - **60** appeals were allowed.
- 4.2 The headline figures therefore show that the majority of Council decisions (**69%**) were upheld in full or in part. Our key performance indicator has a target to win **60%** of all appeals. Performance is very similar to previous financial years - last year of 206 appeal decisions received, 70% were dismissed or part-dismissed.

- 4.3 Of these almost all appeals were written representations, with only two public inquiries and three informal hearings; there were also a small number of fast track householder appeals where an appeal statement is not required.

### Central Government Performance Indicators

- 4.4 As set out above, separate to our own performance indicator, the Secretary of State takes into account the percentage of major and non-major decisions overturned on appeal as an indicator of the quality of decisions made by planning authorities. The current criteria are 10% or more of all major decisions made by the authority subsequently overturned at appeal over a two-year period and 10% or non-major decisions overturned at appeal over a two-year period.
- 4.5 Data is published retrospectively. The latest data published by Ministry for Housing, Communities and Local Government (DCLG) covers appeal decisions on applications determined over a 24-month period to end of December 2017. Nine months are allowed after that for appeals to be made and decided.
- 4.6 This data shows that for Westminster **1.1%** of all non-major decisions and **1.9%** of all major decisions were overturned at appeal. This means we are well below the threshold for designation and suggests that the quality of decision making was good over this two-year period.

### Appeal Decisions by Type of Application

- 4.7 In terms of types of appeals, a breakdown of appeals won and lost and the types of applications involved is set out below.

Type of Application	Appeals Decisions Received			Total appeals (% of total determined in favour of the Council, including those dismissed and those part - dismissed/)
	Allowed	Dismissed	Part Allowed/ Part Dismissed	
Full Planning	36	70	1	107 (66%)
Approval of Details		1		1 (100%)
Prior Approval	5	2	0	2/7 (29%)
Listed Building Consents	6	10	1	17 (65%)
Telecoms	4	19		23 (83%)
Adverts	7	13	1	21 (67%)
Enforcement	2	9	1	12 (83%)

<b>Tables and Chairs</b>		2		2 (100%)
<b>Trees</b>		1		1 (100%)
<b>WCC Total</b>	<b>60</b>	<b>127</b>	<b>4</b>	<b>191</b>

4.8 Withdrawn appeals have not been included within the statistics, a significant number of these were telecoms appeals for the installation of new telephone kiosks. In terms of full planning applications, there is a fairly even split between appeals refused for design reasons and those refused on the basis of amenity or on land-use grounds.

4.9 The Council's Annual Monitoring Report does not currently report on appeals performance in relation to particular policy areas. However, a summary of allowed appeal decisions is published each month, which provides details of why these decisions were allowed. Details of those decisions allowed following a committee decision are set out below. A list of dismissed appeals which raise issues of interest is at Appendix One.

#### **Appeals following a Committee Decision to Overturn an Officer Recommendation**

4.10 The majority of the above appeals relate to delegated decisions taken by officers. During the 2018-19 period, there were nine appeal decisions received which related to applications where a Planning Applications Sub-Committee had overturned the officer recommendation to grant conditional permission (while the appeal decision was issued in this period, the length of the appeals process means the sub-committee decision may have been taken in previous financial years). Seven of these appeals were allowed and two were dismissed. The seven appeals which were allowed are summarised below:

	<b>Reference No/ Site Address</b>	<b>Proposal and Appeal Outcome</b>
1.	<b>17/03567/FULL 1 Regents Mews, London, NW8 0LB</b>	<p>This appeal was against refusal to grant permission to vary the previously imposed condition requiring the second-floor dormer window to be partially obscure glazed. The condition had previously been imposed by Committee.</p> <p>The main issue was whether or not the condition is reasonable and necessary to safeguard the privacy and amenity of the occupiers of adjoining properties. The Sub-Committee considered that the obscure glazing remained necessary to prevent overlooking to the rear garden and windows of the adjacent property.</p> <p>The Inspector, who visited the Objector's property during the course of assessment of the appeal, resolved that obscure glazing was not necessary to protect the amenity of occupiers of the neighbouring property given that the form of the dormer and its orientation facing away from. The Inspector therefore concluded that any increase in overlooking would be limited to oblique views and would not</p>

		amount to a significant increase in overlooking. The appeal was allowed.
2.	<b>16/11276/FULL</b> <b>157 Edgware Road, W2 2HR</b>	<p>The appeal was against refusal to grant permission for use of part basement, ground, first and second floors as a hotel, external alterations to install louvres to the front and rear elevations and installation of mechanical plant within an enclosure on flat roof above second floor level.</p> <p>The main Issue related to the impact of proposals on highway safety. The application was refused at the Planning Applications Sub-Committee on grounds relating to the impact of servicing and arrivals/ departures from the hotel on the surrounding road network. This was despite permission previously having been granted for a similar hotel use on this site in November 2013 with conditions imposed to control the highways impacts of the development.</p> <p>The Inspector resolved that, subject to conditions including a condition requiring a hotel bookings management plan (to prevent coach party booking being taken), the scheme would cause no harm to highway safety arising from the proposed use of the site as a hotel, in respect of service deliveries, taxis and private hire, and coach parking and that the development would accord with policy. The appeal was allowed and full costs were awarded to the appellant against the council on the basis of unreasonable behaviour in resolving to refuse the application without being able to substantiate the harm that would arise from the development (see paragraph 4.12). The costs in this case are in the process of being settled but the appellants have stated their appeal costs were circa £40,000.</p>
3.	<b>17/03517/FULL</b> <b>97 Randolph Avenue, W9 1DL</b>	<p>The appeal was against refusal to grant permission for a variation of a previous planning permission for the excavation of basement extension under garden and house, lower ground floor rear and side extension, conversion of roof space to provide habitable accommodation.</p> <p>The main issue was the impact on amenity of adjoining occupiers, with particular regard to potential light disturbance. The application was refused by committee against officer recommendation due to the impact on living conditions of adjoining occupiers.</p> <p>The Inspector concluded that the substitution of 3 rooflights with one larger rooflight would not cause harm to the living conditions of the occupiers of 99 Randolph Avenue. The appeal was allowed.</p>
4.	<b>17/10699/FULL</b> <b>23 Meard Street, W1F 0EL</b>	<p>The appeal related to refusal of planning permission for the installation of two air conditioning units at rear first floor flat roof level, installation of acoustic screens around the units.</p> <p>The main issues related to impact on amenity (noise) and the impact of proposals on the character and appearance of the conservation area. The appeal was refused at planning applications sub-committee contrary to the recommendation.</p>

		<p>The Inspector did not consider proposals would harm the character and appearance of the conservation area and noted Environmental Sciences officers' advice that proposals were acceptable subject to conditions.</p> <p>The appeal was allowed. An award of costs was sought by the appellant but was refused by the Inspector.</p>
5.	<p><b>17/10761/FULL</b></p> <p><b>20 Ossington Street, W2 4LY</b></p>	<p>This appeal was against refusal of planning permission for re-instating front lightwell to original depth, relocate front door from side to middle bay of facade, new sloping roof to existing rear extension.</p> <p>The main issue was the impact of the rear sloping roof extension on the amenity of occupiers of adjoining 33 Palace Court and impact on outlook and sense of enclosure. The Planning Applications Sub-Committee resolved to refuse the application against the recommendation due to the impact of the rear sloping roof extension on the adjoining residents due its bulk height and proximity to windows in that property.</p> <p>The inspector assessed the quality of the existing outlook from the adjoining property and taking into account the design of the proposed roof sloping away from the window, the extent to which the outlook from the window is already impinged upon and the presence of an additional window serving the bedroom, on balance the inspector the proposed scheme would not materially decrease the living conditions of the adjoining occupiers.</p> <p>The appeal was allowed.</p>
6.	<p><b>17/10600/FULL</b></p> <p><b>40 - 44 Bark Place, London, W2 4AT</b></p>	<p>This appeal against refusal of permission the erection of glass enclosure lobby under existing canopy, including rendering brickwork to front and side elevations.</p> <p>The main issue was the impact of proposals on the character and appearance of the conservation area and on highway safety. The Sub-Committee resolved to refuse the application against officer recommendation.</p> <p>The Inspector concluded that the proposal would preserve the neutral effect of the appeal building on the character and appearance of the Conservation Area and would allow an adequate amount of space to be available for school pupils and others to leave the building safely.</p> <p>The appeal was allowed.</p>
7.	<p><b>18/03465/FULL</b></p> <p><b>2 Barton Street, London, SW1P 3NG</b></p>	<p>This appeal was against refusal of permission for demolition and rebuilding of ground floor extension and excavation of a new basement level beneath the rear extension, widening of existing front dormer window and associated works.</p> <p>The committee resolved to refuse permission against officer recommendation due to the impact of the raising of the boundary wall on the adjoining occupier.</p>

		<p>The inspector concluded proposals were acceptable and would not cause harm to the amenity of the adjoining occupier.</p> <p>The appeal was allowed and full costs were awarded to the appellant against the City Council. The Inspector considered that the Council failed to substantiate the reason for refusal and its assertions were too vague about the proposal's impact and were not supported by any objective evidence. The costs in this case are in the process of being settled but have yet to be specified by the appellant.</p>
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## Awards of Costs

4.11 Costs can be awarded against the Council if it has behaved unreasonably in a way that has resulted in the appellant incurring costs that could have otherwise have been avoided. This could be failure to properly base the decision to refuse permission or serve a formal notice on adopted planning policy and provide evidence of the material harm that would be caused if the development were approved. Alternatively, costs can also arise from failure to defend reasons for refusal adequately at appeal or failure to comply with the procedural requirements of the appeal process or the procedural requirements associated with serving Notices. Awards of costs are relatively rare.

4.12 During the previous financial year there were only two successful awards of costs against the Council, both of these relate to decisions made by Planning Applications Sub-Committees against the recommendations of officers, as summarised above. At 2 Barton Street, the Inspector considered the Council had failed to substantiate the reason for refusal agreed by the Sub-Committee. This appears to be as a result of this appeal being handled under the Planning Inspectorate's fast track 'Householder Appeals Service' through which neither party is permitted to submit an appeal statement. Due to this and the brevity of the explanation of the committee minute in terms of setting out the Sub-Committee's reasons for resolving to refuse permission, the Inspector concluded the Council had failed to adequately substantiate its reason for refusal. The other case where costs were awarded was at 157 Edgware Road. In this case as the Inspector noted that the Council was not able to provide evidence to demonstrate material harm would occur in highways terms if permission were granted subject to conditions similar to those imposed when permission was granted for a similar hotel use on the same site in 2013.

## 5. Financial Implications

5.1 None. A contingency fund is already allocated within the Place Shaping and Town Planning budget to allow for costs awards at appeal and there is no requirement arising from this report for this to be increased.

## 6. Legal Implications

6.1 None.

## 7. Conclusion

- 7.1 The above statistics demonstrate that the majority of the Council's planning decisions are upheld at appeal and this demonstrates that the quality of decision-making is very good.
- 7.2 Although only a relatively small number of appeals allowed it is considered important to continue to monitor these and ensure any lessons are learnt and we consider where there is potential for improvement. The costs awards highlighted in Section 4 identify the need for the following actions going forward to ensure decision making over the next period for 2019-20 is more robust and more resistant to the award of costs at appeal:
- i. Planning Applications Sub-Committees should ensure they are satisfied, when resolving to refuse applications, particularly where this is against the officer recommendation, that there is demonstrable evidence that material harm would occur if permission were granted.
  - ii. In the case of householder applications (such as in the case of the appeal at 2 Barton Street), where there is no right for local planning authorities to submit an appeal statement in support of their decision to refuse permission, the procedures for recording a Committee's resolution to refuse permission against the officer recommendation need to be strengthened so that the reasons for refusal and any representations to the Sub-Committee are more clearly articulated and therefore better understood subsequently by the Inspector at appeal stage.
- 7.3 Further, it will be particularly important to continue to report on and monitor decision-making, including success at appeal, when the new policy framework in the draft City Plan, is published for formal Regulation 19 consultation and once adopted, to understand the impact this new policy framework has on decision making performance and establish the weight being afforded to new policy, as it moves towards adoption.

**If you have any questions about this report, or wish to inspect one of the background papers, please contact: Jane Hamilton, extension 8019.**

## Appendix One

A summary of some appeals which have been dismissed and which raise issues of interest in terms of application of policy is set out below.

- **Shisha Smoking**

There are two recent appeals of interest which relate to unauthorised Shisha Smoking.

**108 Star Street.** This case was of interest because it supports the view that shisha use cannot be 'de-minimis' or ancillary to a restaurant/café use. The Inspector concluded shisha smoking is not functionally dependent on a café use. The Inspector refers to the case law which has established that there should be a 'functional relationship' between an ancillary use and a primary use and that relationship should be one that is normally found, not the personal choice of the person carrying out both activities together. The Inspector came to the conclusion that shisha smoking is a separate, identifiable land use that does not normally form part of a café.

The Appeal was dismissed.

**386 Harrow Road.** Use as shisha café. The main issues identified in this case were the effect of the development on: the provision of retail floorspace in the area; the living conditions of local residents, having regard to outlook, noise and disturbance; public health; and, the character and appearance of the host building and the area. The Inspector concluded that the development will have a detrimental effect on the provision of retail floorspace in the area contrary to Policy S21 and saved UDP Policy SS8.

In respect of Living Conditions, the Inspector concluded whilst the development will not have a harmful effect on the living conditions of neighbouring residents with particular regard to outlook it will have a harmful effect on the living conditions of neighbouring residents with particular regard to noise and disturbance contrary to WCP Policies S24, S29 and S32 which seek to protect residential amenity, including reducing noise pollution. It will also conflict with the residential amenity and pollution aims of saved UDP Policies TACE 9, ENV 5, ENV 6 and ENV 7 as well as the environmental aims of Policies 7.1 and 7.15 of the London Plan. However, the Inspector concluded that the development will not have a harmful effect on the character and appearance of the host building or the area.

The Appeal was dismissed.

- **Local Convenience Retail**

**Great Minster House, Horseferry Road** This was an appeal against the refusal of planning permission under Section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to a 1989 and 1998 permission. Specifically, the removal of Condition B.2 which required a minimum number of four Class A1 units to be occupied or made available by local convenience trades.

The main issue was the effect of the removal of the condition on the provision of a balance of shops, services and facilities. The Appellant had stated that the shift to online services had impacted on the provision of local conveniences and looked to increase the provision of food and drink outlets specifically aimed at the surrounding office workers in the area. However, the Planning Inspector found that many of the local conveniences specified as part of the condition would constitute services that could not be provided online e.g. hairdressers and dry cleaners. Regard was had to the office workers in the surrounding area and the need for

food and drink outlets but the Inspector found that there were sufficient outlets in the area that catered for this need. What the Planning Inspector found was that what remains, when the workers go home, are local residents who should be served by a good range and variety of services to provide good living conditions.

The Planning Inspector found that requiring just four of the ten ground floor units within the application site requiring to provide a local convenience trade was not overly restrictive and allowing the other six to be used outside of this restriction offers a reasonable degree of flexibility; and that the removal of this condition has not been sufficiently justified.

The appeal was dismissed.

- **Impact of new residential units on residential amenity, setting of conservation area and parking demand,**

**William Court Hall Road NW8** This application was for three family dwellings within the grounds of this block of flats located adjacent to the St John's Wood Conservation Area. Members overturned officer's recommendation to approve and refused permission on design, amenity and parking grounds. Permission was refused at committee, contrary to Officer recommendation and a Public Inquiry was held in August last year.

The main issues were the effect of proposals on the St John's Wood Conservation Area and its setting, on living conditions of occupiers of William Court and proposed parking arrangements. The Inspector concluded that the proposal would cause less than substantial harm to the significance of the St Johns Wood Conservation Area, noting the requirement to give great weight to the conservation of the asset which, in this case, he noted is of considerable importance. Collectively, the Inspector considered the identified public benefits of the proposal do not outweigh the harm to the heritage asset, the proposal would have further detrimental impacts on the character and appearance of the area more generally and on the living conditions of the occupiers of flats. It would also result in a limited breach of Policy TRANS23(B). Overall therefore, the inspector concluded that the proposal would not accord with the development plan as a whole and does not amount to sustainable development for the purposes of the NPPF. Residents set up their own group and attended the Public Inquiry as a third party.

The appeal was dismissed.

- **Building Height**

**Landward Court** Two applications were received for a roof extension to create additional residential dwellings on a 13 storey 1960s tower block on Harrowby Street. The site is not in a conservation area but forms part of the setting of the Molyneux Street Conservation Area as well as several listed buildings. Both applications went to appeal.

The first appeal related to a two-storey roof extension to the tower to create additional units, which the Council refused on land use (residential mix) and design grounds (height and impact on heritage assets). The second appeal related to a single storey roof extension which the Council refused on design grounds only. The Inspectorate supported both decisions to refuse permission, acknowledging that the existing building is already a strident and dominant feature in the townscape and the harmful impact of the proposals for additional height on the setting of the adjacent conservation area and listed buildings and supporting the Council's current approach to resisting upwards development on this imposing tower

block. In the first application, he notes that the provision of 2 bedroom units would make a positive contribution to the shortfall in such units. However, taking this approach, without providing the required mix of units, would result in an unsustainable pattern of growth that would only further compound the issue of a lack of family sized dwellings.

Both appeals were dismissed.

- **Residential Amenity in CAZ**

**46 Shaftesbury Avenue** This appeal relates to an application for reconfiguration of an existing nightclub which involved repositioning the main entrance from Shaftesbury Avenue to Rupert Street. The appeal site is an existing night club that operates from within the London Trocadero building complex.

The appellant argued that the noise and disturbance that is likely to occur (from patrons entering/exiting) is appropriate in a West End location, where night time leisure and entertainment uses are a strategic function. The inspector agreed that residents of the West End would expect some noise disturbance at night given the vibrant urban location, however, he concluded that the appeal scheme would displace the existing noise and disturbance to a more sensitive location and this would significantly harm the living conditions of the residents of Rupert Street.

The appeal was dismissed.

The appellant also sought a costs application on the grounds that the Council's refusal of planning permission was a substantive failing as the amenity concerns were capable of being dealt with through the imposition of a planning condition. The inspector also agreed that the Council did not act unreasonably in refusing the planning application after exercising its planning judgment and concluding that the Operational Management Plan would be ineffective.

- **Telephone Kiosks**

**Euro Payphones appeals for new telephone kiosks (17 dismissed, 2 were allowed)**

The reasons for refusing these applications varied and so did the Inspector's decisions. Generally, these were dismissed because the telephone kiosks would add unacceptable visual clutter to the street or harm pedestrian movement. In some cases, there was harm to the conservation area and setting of listed buildings. The proposals did not include advertisements but the kiosks were designed to incorporate them.

Following the High Court decision (currently being appealed by New World Payphones) we would argue that these appeals relating to prior approval should not be processed by PINS because the judgement says prior approval is not the appropriate application, because they are primarily advertisement structures.

- **Temporary Shroud Advertisements**

There have been a number of applications and appeals related to large temporary shroud applications. Appeals on the following sites were dismissed:

131 Baker Street

138 Shaftesbury Avenue

111 Marylebone High Street

5 Lisle Street

7 - 8 St Martin's Place

116 Brompton Road

The Inspectors accepted that although these locations were commercial in character, existing signs are predominantly located at and below the fascia levels of the buildings and the architectural detailing of the upper storeys can be clearly appreciated. The proposed advertisements would be of considerable scale and height and located at a level where other prominent signs are rare. Due to these factors the advertisements would appear out of kilter with the prevailing pattern of the street scene. Where illuminated this would exacerbate its visibility and prominence and thus intensify the harmful effects in these regards.

One appeal was allowed at 25-27 Oxford Street. This was an anomaly even in Oxford Street where almost all appeals have been dismissed in recent years.



**City of Westminster**

## Planning & City Development Committee

**Date: 20 June 2019**

**Classification: General Release**

**Title: Annual Update on Planning Application Performance**

**Report of: Director of Place Shaping and Town Planning**

**Financial Summary: None.**

**Report Author and Contact Details: Oliver Gibson (ogibson@westminster.gov.uk/ 020 7641 2680)**

### **1. Executive Summary**

- 1.1 This report presents an annual update on the performance of the Place Shaping and Town Planning department in terms of the timeliness and quality of its decision making in respect of planning applications. The performance of the department over the period between April 2018 and March 2019 continues to significantly exceed the required performance thresholds set by the Ministry of Housing, Communities and Local Government (MHCLG).

### **2. Recommendation**

- 2.1 Members are asked to consider the contents of this report and to note the ongoing good performance of the Place Shaping and Town Planning department in terms of its performance in the determination of planning applications.

### **3. Background**

- 3.1 The performance of local planning authorities in determining major and Non-Major development is assessed on a quarterly basis by the MHCLG. The assessment of performance is judged by the MHCLG against two separate measures of performance, which are:

- the speed with which applications are dealt with measured by the proportion of applications that are dealt with within the statutory time or an agreed extended period; and,
- the quality of decisions made by local planning authorities measured by the proportion of decisions on applications that are subsequently overturned at appeal.

Where an authority does not meet the required performance levels set out in Table 1 (below), it can be 'designated' by the MHCLG on behalf of the Secretary of State. Where a local planning authority is designated, applicants may apply directly to the Planning Inspectorate (on behalf of the Secretary of State) for determination of the

category of applications (i.e. major, Non-Major or both) for which the authority has been designated.

- 3.2 Local planning authorities are required to submit data showing their performance against the speed and quality measures set by the MHCLG on a quarterly basis and this data is published by the MHCLG.

**Table 1 – MHCLG Major and Non-Major Application Performance Indicator Thresholds**

Measure and type of Application	Threshold and assessment period October 2016 to September 2018	Threshold and assessment period October 2017 to September 2019	Live Table
Speed of major Development (District and County)	60%	60%	District - P151a County - P151b
Speed of non-major Development	70%	70%	P153

Measure and type of Application	Threshold and assessment period April 2016 to March 2018	Threshold and assessment period April 2017 to March 2019	Live Table
Quality of major Development (District and County)	10%	10%	District - P152a County - P152b
Quality of non-major Development	10%	10%	P154

(Table extracted from 'Improving Planning Performance – Criteria for Designation (revised 2018)' – MHCLG.)

Full details of the legislative and regulatory background to the MHCLG performance thresholds and designation process can be found in the MHCLG guidance document 'Improving Planning Performance – Criteria for Designation (revised 2018)', which is attached at Appendix 1.

## 4. Considerations

### Speed of Decision Making

- 4.1 For the period from April 2018 to March 2019 the City Council met and exceeded the MHCLG performance thresholds for both Major and Non-Major applications. The Major applications threshold was exceeded by 27%, whilst the Non-Major applications threshold was exceeded by 9% (see Tables 2 and 3). Coupled with similar performance for the preceding 2017/ 2018 financial year, the City Council is not at risk of designation in respect of the speed of its decision making.

**Tables 2 & 3 – Performance Against MHCLG Thresholds for Major and Non-Major Planning Applications for April 2018 to March 2019 period.**

Development Type	Total Decisions	Total Less than 13 weeks	Total PPA's/ EoT's within target	% < 13 weeks or within PPA/EoT Target
Majors	47	1	40	87.2%

Development Type	Total Decisions	Total < 8 weeks	Total PPA's/ EoT's within target	% < 8 weeks or within PPA/EoT Target
Non-Majors	3259	2212	372	79.3%

4.2 The latest data published by the MHCLG for the two-year period up to December 2018 shows Westminster's performance for Major applications to be 89.7%, whilst performance for Non-Major applications is 80.2%. The latest performance statistics therefore demonstrate in combination with the previously published MHCLG data that the department continues to provide a consistently high level of performance in terms of the speed of its decision making.

### Quality of Decision Making

4.3 The performance in terms of the number of appeals won and lost over for the 2018/2019 financial year is set out in detail in the Planning Appeal 2018-19 item, which is also on this Committee agenda. Over this period 66% of the 191 appeals submitted were dismissed and the Council's original decision upheld.

4.4 The quality of decision making by local planning authorities is measured by the MHCLG in terms of the proportion of decisions that are overturned and allowed at appeal over a rolling 24-month period. The threshold for designation is where 10% or more of a local planning authorities' total number of decisions on applications within a given period are overturned. It should be noted that only certain types of planning application are included in the MHCLG appeal performance statistics.

4.5 The latest data published by the MHCLG for Major application appeals demonstrates that in the two years to December 2017 the City Council handled 161 applications of which 5 resulted in appeals and of this number 3 were allowed. As a percentage of the total number of Major applications handled in this period this equates to 1.9%. This is well below the 10% threshold for designation.

4.6 The latest data published by the MHCLG for appeals demonstrates that for Non-Major applications in the two years to December 2017, the City Council handled 7,821 applications of which 273 resulted in appeals and of this number 83 were allowed. As a percentage of the total number of Non-Major applications handled in this period this equates to 1.1%. This is well below the 10% threshold for designation.

4.6 In light of the statistics referenced in Table 4 and in paragraphs 4.5 and 4.6, the department can be seen to be performing well in terms of its quality of decision making, which has been consistently supported by Planning Inspectors at appeal.

### 5. Financial Implications

5.1 None.

## **6. Legal Implications**

6.1 None.

## **7. Conclusion**

7.1 The Place Shaping and Town Planning department has performed well against the MHCLG performance indicators and these demonstrate that the department is providing a good service in terms of both the speed and quality of planning outcomes it delivers to applicants and stakeholders.

**If you have any questions about this report, or wish to inspect one of the background papers, please contact: Oliver Gibson (ogibson@westminster.gov.uk / 020 7641 2680)**

### **Background Papers:**

1. Improving Planning Performance – Criteria for Designation (revised 2018) – MHCLG ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/760040/Improving\\_planning\\_performance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760040/Improving_planning_performance.pdf))