

COMMUNITIES AND PLACE OSC

REPORT TO CABINET

16 JANUARY 2024

Planning Service Performance

At the meeting of the Communities and Place OSC held on 29 November 2023, at the request of the Committee, Rob Murfin, Director of Housing and Planning presented a report which provided an overview of the performance monitoring and assurance arrangements currently in place for the Local Planning Authority function of the Council. Councillor Colin Horncastle, Portfolio Holder for Looking After Our Environment was also in attendance.

Also in attendance:

Nick Oliver (Chairman), Mark Mather (Vice Chairman), Eileen Cartie, Anne Dale, Brian Gallacher, Jim Lang, Nick Morphet and Jeff Reid.

The following is an extract from the draft minutes of the meeting:

The purpose of the report was to provide an overview of the performance monitoring and assurance arrangements currently in place for the Local Planning Authority function of the Council. (A copy of the report was enclosed with the signed minutes).

The Director of Planning and Housing explained that officers had to balance a large number of performance indicators, including speed, quality of outcome, and delivery, all whilst reflecting public opinion. This was not always possible as it often resulted in one (or more) parties being dissatisfied. If emphasis was placed on one metric, it often impacted on others. This was demonstrated via a focus on the performance of major applications determined within 13 weeks during/after the pandemic to aid economic recovery, which had resulted in a dip in performance of minor applications determined within 8 weeks. The latter had since improved.

Benchmarking was undertaken with other local authorities as well as officers leading on national work in areas such as validation and performance agreements. Some elements of performance could be improved, such as speed, if an approach was adopted which refused applications within an early timeframe if they were not up to standard. However, he explained that this Council worked with applicants to secure investment, which was reflected in the higher-than-average approval rate.

It was noted that there were fewer complaints upheld against the Council by the Local Government Ombudsman (LGO) and the merit of decisions by the Planning Inspectorate, than the national average. For many of the key performance indicators, the Council was in the top 25% of authorities and top 1% for some

indicators. For reference, there were 470 local authorities who dealt with planning applications.

The following information was provided in response to questions raised by members:

- The Council met all statutory targets.
- When an application was received, advice was obtained from technical bodies such as the Lead Local Flood Authority, Environment Agency, Natural England, National Highways to see how schemes could be improved. A balancing exercise was also sometimes required of the differing responses from statutory consultees whilst responding to concerns raised by members of the public, or town and parish councils.
- Some delays arose by insufficient information being submitted by applicants. Officers had participated in a national piece of work to review how applications were validated with a view to increasing the quality of submissions. A triage approach was now being adopted with some non-starter applications being refused at an earlier stage rather than spending many months working on them. This had to be balanced against losing more appeals if too many applications were refused.
- Training sessions had been held for town and parish councils to improve understanding as well as the quality of residential development through the production of design guides.
- Requirements by Government included the delivery of the majority of affordable housing through the land use planning system, biodiversity net gain and ecological improvements.
- The Council was in the top 15 LPAs for the highest number of major planning applications received per year and an average total number of applications annually of between 5,000 to 6,000. Balancing the various elements resulted in either a developer, resident, or government being upset or not delivering the Council's corporate priorities.
- A copy of a recent LGA report would be circulated which referred to the increasing backlog of enforcement activity which was being experienced by English local authorities. The Council had adopted a new enforcement strategy in February 2023 which focused on major schemes rather neighbour disputes. Comparison was made with the number of enforcement officers employed by the district councils prior to Local Government Reorganisation (LGR) of 1.5-2.5 which equated to between 1-15 officers and 4.5 officers across the county now. It was noted that as enforcement activity did not generate fee income, it was difficult to justify enforcement staff.
- Approximately 20,000 emails were received annually in the central planning mailbox with 26,000 comments entered via the public access system all of which had to be actioned or responded to. Officers therefore had to be firm as to when they would respond to correspondence although some local authorities did not permit any form of direct contact.
- New planning applications fees were to be introduced which had been incorporated into budget assumptions. The matter of enforcement was to be considered by the Senior Leadership Team and whilst it was not expected that there would be a return to pre-LGR staffing levels, it was hoped 4 enforcement teams could be established which mirrored the Development Management

structure rather than one central team, with an increase in the number of enforcement officer.

- *Discussions were being held with the Monitoring Officer regarding the creation of a rolling fighting fund to be utilised for taking direct action rather than existing budgets, which would see a charge placed on land and when monies were recovered, this would be returned to the fund.*
- *There had been a significant increase in the number of enforcement notices served by this authority over the last 18 months following a more assertive approach, which had stretched resource to capacity. It was suggested that more could be done to raise awareness of successful cases similar to the press releases issued by Public Protection for successful prosecutions.*
- *Enforcement notices were drafted by the Planning Enforcement Officers which were then checked by legal who also had to co-ordinate who the notice was served on which included any party with an interest in the land and not just the person who had undertaken the unauthorised activity but also the owner of the land and mortgage company. The legal team also drafted section 106 notices as well as work for housing and other departments across the council with a finite resource.*
- *Senior officers received many emails from members querying enforcement action being taken as well as advocating zero tolerance. Some cases were down to genuine mistakes, acting on bad advice from a contractor /builder or wilful disregard. More direct action was being taken; however, it was extremely expensive, and consideration needed to be given on how costs were recovered.*
- *The Council was required to produce an annual Infrastructure Funding Statement (IFS) which summarised all financial and non-financial developer contributions each financial year. A copy of the IFS for 2021/22 would be recirculated.*
- *There had been underperformance of the delivery target for affordable housing for the last 12 months as stated within the report on Corporate Performance. However, approximately 1,400 units had been negotiated which were built at a slower rate than the negotiation of agreements. It was suggested that it would have been more helpful to provide an additional explanation regarding the time lag. Different routes to delivery were being used in the event of the market slowing which would also impact on the delivery of affordable housing. The 7-year period coincided with the housing need assessments carried out as part of the work for the local plan. 2016 was the starting period for the current land supply strategy. The target was for 17% of market housing to be affordable. The annual average equated to 16.4% which was just below the aforementioned figure identified in the latest countywide needs assessment. In conclusion, there were sufficient agreements in place to ensure delivery of affordable housing over the next few years. However, this was supplemented by the Council's own build programme through partnership working with Homes England, North of Tyne Combined Authority etc to lever in additional funds to enable this.*
- *The new Northumberland Local Plan set higher standards in many areas including quality and sustainability. The strength of this could be monitored via the successful defence of appeals, which at 82% was higher than the national average of 63%. The local plan was a set of guiding principles and set out where applications would be approved or refused, unless there were compelling reasons to do otherwise, for example where the quality of a scheme was not of a high enough standard or very special circumstances in the Green Belt.*

- *Staff turnover had not been aided by direct emails from another local authority inviting planning officers to apply for jobs. A number of others had left for jobs with the Planning Inspectorate. The latter could be taken as compliment on the quality of the Council's staff and training. New staff participated in an internal training programme which included technical aspects and decision making etc.*
- *Appendix A of the report set out 108 types of planning applications all of which had different validation requirements, different information requirements and different procedures and occasionally an error occurred, however, the council performed better in respect of LGSCO complaints than the local authority average and also with other areas within the county council.*
- *Special training had been held on highways matters which generally related to capacity, design or road safety issues. More training by Highways officers would perhaps be beneficial to explain the background for decisions including recent changes to legislation which required reasons for refusal on highways grounds only if there was a severe impact, the role of road safety audits, sustainable transport and active travel.*
- *Enhancements had been made to the pre-application process for complex schemes with a view to assisting the development industry submitting applications which met the council's requirements, saving money and time, enabling problems to be solved at an earlier stage. As this had only been introduced in October 2023, it would be beneficial to review the process and impact after 12 months.*
- *Clarification was provided on the various types of affordable housing which gave options to suit people with different personal circumstances.*
- *The local plan incorporated provision to permit affordable housing, in locations where market housing would be refused which would be and would aid provision in rural areas via Neighbourhood planning and community led housing processes.*
- *If an enforcement notice was served due to an extension, for example, not meeting building regulations or planning requirements and although not followed up, this would be problematic for most people in society as they would not be able to sell their house.*
- *Officer undertook expediency tests on potential enforcement cases where there might be a minor technical breach or to prevent becoming involved in protracted neighbour disputes.*
- *Only applicants could appeal to the Planning Inspectorate and often these were for non-determination within the specified period rather than refusal. The Council was also successful in defending many of these cases.*
- *Whilst regular surveys were completed which included resourcing, it wasn't easy to make direct comparison due to different local authorities including different elements. Northumberland County Council had carried out benchmarking with Durham County Council as part of a restructure several years ago as they were similar in size at that time and had employed more officers, but current data was not available. A restructure would be needed in the near future to respond to The Levelling-Up and Regeneration Act.*
- *The Enforcement Strategy included a flow chart which set out the process.*
- *Minor costs had been awarded against the Council for minor applications. Significant costs had been awarded against the Council in respect of historic decisions on major schemes in New Hartley and Lancaster Park, Morpeth where there had been a planning hearing, but these were generally rare compared to some cases in the Southeast England.*

- *The Council set stretch targets were set above all of the national targets and the Enforcement Team had been tasked to close cases as quickly as possible. An aggressive target had been useful in pushing performance.*
- *NCC had partnered with the London Borough of Redbridge Council several years ago as they performed exceedingly well on speed-based performance indicators. However, it was noted that they were operating under different market conditions where there would be alternative schemes waiting if permission was refused on a site, unlike the position in this county where inward investment often had to be encouraged in a weaker market. Whilst they refused permission very quickly, the approach was likely to be less successful in Northumberland as it would be more difficult to achieve affordable housing outcomes. The planning reform could see more refusals despite being labelled as developer friendly.*

Several members expressed their appreciation for the information contained in the report. They also commented on the following:

- *A Local Government and Social Care Ombudsman (LGSCO) report had resulted in changes to procedures to ensure assessments were documented.*
- *Planning officers in Northumberland were dealing with almost double the average case allocation during peak periods compared with typical English LPA allocations (as documented on page 44 of the papers). Enforcement officers were working under similar caseload pressures and also enormous expectations.*
- *Changes of planning officers had resulted in different opinions.*
- *Whether any delays in the issuing of enforcement notices were due to the time taken by the legal team and whether there was evidence to substantiate this. Others noted that following the correct legal process could take many years. It was also queried whether cases should only be progressed where success was guaranteed.*
- *Planning officers carried out a difficult role which was demonstrated by the turnover of staff leaving for other jobs which offered more money and a reduced workload. It was important to ensure new staff understood planning policies and procedures.*
- *The robustness of the recently adopted local plan and settlement boundaries.*
- *Frustration with strength of enforcement powers, particularly where construction had been halted following the serving of an enforcement notice and schemes were not progressed.*
- *It would be useful to receive more information on numbers rather than percentages.*
- *It was difficult to contact the planning helpline or have dialogue with officers.*
- *There was concern regarding the delivery of affordable housing, particularly in rural areas. Concern that affordable housing targets were not being met and could struggle to be achieved in future years with difficult markets or unexpected conditions on site.*
- *More information was requested on resourcing, the enforcement process and the costs awarded against the Council. How had resourcing changed over the years and how it compared to other councils.*
- *It would be helpful to create a chart for a 7-year period which showed:*
 - *The number of houses delivered each year;*
 - *The percentage delivered which were affordable housing;*

- *The number of permissions granted;*
- *The percentage permitted which were affordable housing.*

The Director of Planning and Housing gave a short update on The Levelling-Up and Regeneration Act 2023 which had been given Royal Assent in October 2023 which intended to facilitate growth in all parts of the country. The summary on planning matters included:

- *Development Plans (Local and Neighbourhood) - introduction of supplementary policies into “supplementary plans” as part of the development plan to support regeneration work in a town.*
- *National Development Management Policies (NDMP) – introduction of standard NDMPs which will form the starting point for evaluating all planning applications, driven by a request for consistency from the private sector for firms operating in different parts of the country. These could potentially be more restrictive in some areas. Development proposals not in accordance with the development plan and NDMPs must demonstrate material considerations that strongly supported a proposal otherwise there would be an even greater presumption against development that is not in accordance with policy.*
- *Heritage – strengthen arrangements for heritage and listed buildings with a new duty to have “special regard” to the desirability of preserving or enhancing specified heritage assets for plan-making and decision-taking. Emphasis was placed on ‘enhancing’ and that plans must be of good quality to be approved. Stop notices were to be introduced for listed buildings.*
- *Street Development Orders - following a similar principle to existing “local development orders” (or LDOs) in the sense that they allow for specified classes of development to be given planning permission, without needing a separate planning permission, for example, solar panels on roofs in a street, potentially similar to neighbourhood plan work.*
- *Expansion of the different types of planning applications listed in Appendix A.*
- *Commencement Notices – where construction had been started within 3 years of the planning permission having been granted, this would give powers to compel a developer to finish the work. More information was awaited on ‘the alleged circumstances of potential breaches of slow progress’.*
- *Planning Enforcement – the immunity period was to be extended from four years to ten years for a breach of planning control before it would be deemed lawful.*
- *Infrastructure Levy – to replace Section 106 agreements or Community Infrastructure Levy (CIL). Every developer would be required to pay an amount on meter² which would then be placed in a fund and allocated as per the local strategy and with local discretion on the rates charged across the county. If the system worked similar to the CIL provisions, town and parish councils would receive between 15-25% automatically if neighbourhood plans and action plans were in place to specify the allocation of funding. There had been concerns previously regarding the implementation of a tariff-based funding arrangements, the new system was expected to deliver the same, if not more, affordable housing.*
- *Areas of Outstanding Natural Beauty to be rebranded as ‘National Landscape’ areas with powers closer to those of National Parks. New management plans would be required.*

He concluded his update by referencing new planning performance measures in section 6 of the report which he was pleased to report that the Council already measured. Higher performance could be achieved if more applications were refused shortly after submission, rather than working proactively with applicants and statutory consultees to address issues. However, this would impact on the objectives of the Corporate Plan, Tackling Inequalities and Driving Economic Growth.

Members suggested that it would be beneficial if the new supplemental plans could be utilised to aid affordable housing in rural areas.

In answer to a question, the Director of Planning and Housing stated that information was awaited as to whether a 200% fee would be introduced by for retrospective applications once the new fee structure was bedded in, as there was to be an annual increase in fees.

Councillor Colin Horncastle, Portfolio Holder for Looking After Our Environment, commented on his satisfaction in seeing the contents of report which set out performance measures from validation to decision making and enforcement which exceeded most Government targets and stretch targets. He was therefore disappointed with what he perceived as criticism of the planning department and officers' morale given their workloads and willingness to do extra, such as planning training. He confirmed that enforcement and affordable housing was regularly monitored and acknowledged that the latter was particularly hard to deliver in the north and west of the county. He referred to a recent Affordable Housing Policy Conference which had been held as a hybrid meeting to facilitate attendance remotely, but less than half of councillors had participated. Identification of potential plots of land required suggestions by ward members, particularly in rural areas.

He also made reference to the new Enforcement Strategy and a number of different circumstances, where parties opposed to a planning application, would monitor and log issues which had to be recorded and investigated. Not all would be considered significant.

The Chair commented that the role of the meeting was to scrutinise and that the systems within the Council and planning department were working well and exceeding government targets. Members had strong opinions regarding enforcement as issues were regularly raised by residents in their wards. They were reassured that the Portfolio Holder and Senior Leadership Team were monitoring and looking for ways to address issues. The committee were keen to ensure that the Planning Team were supported given the concerns regarding caseloads and increasing resources.

The Director of Planning and Housing made reference to the different types of enforcement activity undertaken by the Council which in addition to planning matters, included licensing, building control and public protection and potentially involvement by multiple departments. He commented that he was in discussion with the Monitoring Officer regarding:

- *The establishment of an Environmental Enforcement Board, possibly with elected member representation, to identify priority cases and lead departments.*

- *The role of members to identify rural exception sites for affordable housing, working with communities and parish and town councils to ascertain if there was consensus in the local community before these were brought to planning.*
- *Potential circulation of a comprehensive social and affordable housing data report, on a quarterly or half yearly basis.*

He confirmed that the presentation and video from the Affordable Housing Policy Conference and a transcript of Questions and Answers was to be circulated to all members.

Several members expressed their support for the establishment of a separate enforcement working group / committee or policy conference. It was reported that training on enforcement matters had been requested by the Ashington and Blyth Local Area Committee.

The Chair thanked the Director of Planning and Housing and Head of Planning for their report and presentation.

RESOLVED that:

- 1. The contents of the report be noted.***
- 2. Members of the committee noted the potential for increase in planning income and recommended to Cabinet to consider investment in the enforcement team and the addition of a rolling fighting fund to support this work.***
- 3. Cabinet to also consider additional support for the Planning Department to deal with the increase in the number of planning applications and enquiries received.***

Cabinet is therefore requested to approve the recommendations of the Communities and Place Overview and Scrutiny Committee.

COUNCILLOR NICK OLIVER

CHAIRMAN