

Report of Chief Planning Officer

Report to Corporate Governance and Audit Committee

Date: 22 November 2019

Subject: Assurance around the arrangements in place for Members to refer planning applications to Plans Panel for determination and the Governance arrangements for enforcement proceedings

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary

1. Main issues

- Members of the Corporate Governance and Audit Committee at its meeting on 25 June 2019 requested that a report providing assurance around the arrangements in place for Members to refer planning applications to Plans Panel for determination and the governance arrangements for enforcement proceedings be brought to a future meeting.
- This report briefly provides the context for decision making on planning applications in England and goes on to describe the functions delegated to the Chief Planning Officer in relation to determining planning applications and provides further detail and assurances around the operational process for members to request the referral of items to the Plans Panel for determination.
- The governance arrangements for dealing with enforcement proceedings are then described, providing assurances around the transparency and robustness of existing processes.

2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

- The Council's decision making framework sets out systems and processes which ensure information is shared in a clear and consistent fashion. The decision making framework seeks to ensure that Leeds City Council is open, honest and trusted.

3. Resource Implications

- There are no resource implications arising from this report; all systems and processes which are in place to meet the requirements of the decision making framework do so from within existing resources.

Recommendations

- a) Members are requested to consider and note the positive assurances provided in this report and the future steps to provide additional assurances in the referral process.

1. Purpose of this report

- 1.1 This report was requested by the Corporate Governance and Audit Committee at its meeting in June 2019, where members requested additional details and assurance around the arrangements in place for Members to refer planning applications to Plans Panel for determination and the Governance arrangements for enforcement proceedings.

2. Background information

- 2.1 On 25 June 2019 the City Solicitor, Chief Officer Elections and Regulatory and Chief Planning Officer presented the joint Annual Decision Making Assurance report. Part of this report considered the assurances for decision making in the planning application process. Following member comments, the service was asked to bring a further report providing assurance around the arrangements in place for Members to refer planning applications to Plans Panel for determination and the governance arrangements for enforcement proceedings.
- 2.2 This report will deal with both areas in turn, starting with Member referral to Plans Panels and then describes the process of enforcement in Leeds and provides assurances around those processes.

3. Main issues

3.1 Referral of items to Plans Panel

- 3.1.1 The framework for decision making in relation to planning matters in England and Wales is plan-led. This involves the authority preparing plans that set out what can be built and where. All decisions on applications for planning permission should be made in accordance with the Development Plan unless material planning

considerations indicate otherwise. Material considerations cover a wide variety of matters including impact on neighbours and the local area.

3.1.2 Applications are not determined on whether there is local support or opposition but in assessing the Planning merits of a proposal, the case officer takes into account any material planning matters raised by public comments. Only material planning matters can be taken into consideration in reaching a decision.

3.1.3 The Council delegates specific functions to the Chief Planning Officer who is then authorised to carry out those functions on behalf of the Council. The latest delegation scheme was approved by Council on 22 May 2019.

3.1.4 All planning applications are considered to fall within the Chief Planning Officer delegation scheme and will be determined by officers under the sub-delegation scheme, last approved on 23 August 2019, unless they fall into defined exceptional categories; the exceptions are detailed in the delegation scheme. In such cases applications are determined by the Plans Panels. The City Plans Panels and Area Plans Panels terms of reference, describing the functions which each Panel is authorised to discharge, were last reviewed and amended in 2019 and approved by Council on 22 May 2019.

3.1.5 The exceptions facilitate Members' right to request that an application comes to the Plans Panel for determination, and part 1a of the Chief Planning Officer delegation scheme, the Exceptions section sets out the circumstances when this is allowable:

*The Chief Planning Officer is not authorised to discharge the following functions:
The determination of applications following a written request⁷ to the Chief Planning Officer by a Ward Member*

- *concerning an application within the Ward he/she represents, or*
- *concerning an application within a neighbouring Ward where that Ward Member considers that the development would have a significant effect on the ward he/she represents that an application be referred to the relevant Plans Panel;*

3.1.6 Footnote 7 relating to part 1a says:

This request must be made to the Chief Planning Officer and should normally be made within 21 days of the date of validation. The application can be legally determined after the 21 day statutory advertisement deadline if no such request has been received by that deadline. The request must set out the reason(s) for the referral based on material planning consideration(s) and must give rise to concerns affecting more than neighbouring properties (these being those which are notified by means of a letter as part of the Council's policy regarding publicity on householder planning applications).

3.1.7 These Exceptions are translated into an operational process for dealing with member referrals, described below:

- Ward Member request received by case officer
- The request is assessed by case officer to determine whether the application in question falls within referral test as set out in the Council's Constitution (as above):
- If the test is met, the application should be referred to appropriate Plans Panel

- If the test is not met, the matter should be discussed with the relevant Plans Panel Chair so they can decide, in conjunction with the Chief Planning Officer, whether to use their Chairs discretion to refer the application to Plans Panel. There are two options within the Constitution available to the Chairs:

Part 1d *“the determination of applications for major development which the Chair considers are sensitive, controversial or would have significant impacts on local communities”*; and

Part 1g *“where the Chair considers that the application should be referred to the relevant Plans Panel for determination because of the significance, impact or sensitivity of the proposal”*.

- 3.1.8 If the Chair does not wish to exercise their discretion, the case officer will respond to the Ward Member and explain that their request for referral does not meet the test and that the matter was discussed with the Chair of the Panel who has decided it is not appropriate to use their discretion to refer the application to Panel.
- 3.1.9 If the Chair decides to use their discretion, then the Ward Member will be advised that despite their request not meeting the ward member referral test, the Panel Chair is of the view that the application meets one of the Chair’s discretionary tests and therefore the application will be referred to Panel.
- 3.1.10 This approach adheres to the requirements of the Council’s Constitution. Whilst the delegation scheme was last approved by Council on 22 May 2019, it is recommended that as part of the annual review, particular attention is paid to the Chief Planning Officer’s delegation scheme and it is reviewed in consultation with the Executive Board Member for Climate Change, Transport and Sustainable Development and the Plans Panel Chairs, to ensure it is up to date and remains fit for purpose. It is also recommended that as part of this review, benchmarking with the Core Cities takes place. However, it is important that any scheme of delegation is fit for the Leeds approach.
- 3.1.11 From the assessment of the process, the Chief Planning Officer has reached the opinion that this referral process is operating soundly. However the service does not currently routinely collect statistics on the level of member referrals and this is an area to improve, to increase transparency. It is proposed that with immediate effect, the service will collect data on member referrals and include this information as part of the Planning Services annual assurance report going forward.

4. Governance arrangements for enforcement proceedings

4.1.1 Legal and Policy framework

- 4.1.2 The National Planning Policy Framework (NPPF) sets out the Government’s planning policies for England and how these should be applied; it is also the framework for decision making in relation to enforcement matters in England.
- 4.1.3 In considering any enforcement action, the local planning authority should have regard to the NPPF, in particular [paragraph 58](#). Paragraph 58 refers to states “Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They

should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

- 4.1.4 The Government's supplementary Planning Practice Guidance (PPG) note relating to enforcement, *Enforcement and Post Permission Matters*, last updated 22nd July 2019 states "There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way". The PPG goes on to say that there is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control".
- 4.1.5 The provisions of the [European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14](#) are also relevant when considering enforcement action.

4.2 Governance arrangements for Enforcement action in Leeds

- 4.2.1 The Leeds Enforcement Plan was approved as an operational document by the Chief Planning Officer in July 2018 following consultation with the Executive Member for Planning and Transport, the Plans Panel Chairs, Members of Joint Plans Panel and the Joint Member Officer Working group on Planning. The Plan outlines the key considerations for the planning enforcement service in Leeds and sets out the main procedures and principles the service will adopt to regulate development and its priorities for investigation. The Plan relates back to Government guidance as well as corporate priorities and the statutory Development Plan. It gives guidance on what can be done, the timescales for doing so and also how the service will balance the demands on requests for service with the resources available. The service operates within the principles outlined in the enforcement plan.
- 4.2.2 The Council delegates specific functions to the Chief Planning Officer who is then authorised to carry out those functions on behalf of the Council. The latest delegation scheme was approved on 22nd May 2019.
- 4.2.3 All planning enforcement matters are considered to fall within the Chief Planning Officer delegation scheme and are determined by officers under the sub delegation scheme; there are no exceptions within the current scheme.
- 4.2.4 The service has a duty to investigate all enforcement matters it receives. As such Enforcement matters are allocated to case officers within the service who conduct site visits, investigative checks and meetings as appropriate. Officers then make recommendations as to the course of action to pursue; this recommendation will have due regard to the NPPF and PPG mentioned above and the Council's Enforcement Plan. As encouraged by the guidance, enforcement activity will almost always seek to resolve issues first by negotiation and by working with developers/ owners to address any problems. For example, it may be considered expedient to secure a change of roofing materials or change a fence height so that the development is then permitted development. It has proven quicker to use a range of informal measures first and only when these measures have been

exhausted would *formal* action normally be considered. Formal enforcement action, will only be taken as a final resort, when it is expedient, proportionate and in the public interest to do so.

- 4.2.5 On a small number of cases, a breach may be identified and a decision taken that it is not expedient to pursue further. These decisions would only generally be made when the breach is very minor and causes no identified planning harm in accordance with relevant guidance. For example a wall or fence that is a few centimetres higher than permitted development and the lowering to comply with permitted development would make no difference to the overall impact. Government guidance is clear that action should not be taken simply to regularise development or ensure the submission of the necessary applications when the development is acceptable in all other ways and would be highly likely to be granted planning permission. Where no further action is recommended due to a lack of expediency, the case will fully appraised and documented for approval by a senior officer.
- 4.2.6 During a case review a more senior officer makes the final decision and the Chief Planning Officer’s sub-delegation scheme ensures that decision making is undertaken at the appropriate level of seniority and experience. No Officer can decide their own cases and therefore, an appropriate level of external scrutiny is brought to bear on each case before it is finally determined.

4.3 Enforcement performance

- 4.3.1 In 2018-19 the service received 1,337 new cases and resolved 1,427 cases. The table below shows the outcomes of cases resolved and the means of that resolution:

Table 1: Enforcement Performance

	Q1	Q2	Q3	Q4	Total for 2018-19
No Breach*	40%	49%	52%	37%	44.5%
Breach but de Minimis/ not expedient	12%	10%	13%	17%	12.8%
Resolved by negotiation	32%	26%	22%	33%	30.2%
Planning permission/ CLU granted/ appeal allowed	13%	11%	11%	10%	10.4%
Enforcement /other notices complied with	3%	4%	2%	3%	2.1%

**Includes matters that are “permitted development”; where no development or material change of use is involved; matters that were time exempt from enforcement action on investigation; or where approved plans and conditions have been found to have been complied with.*

- 4.3.2 The above Table 1 demonstrates that across the year, in 44% of the cases investigated, there was no breach of planning control found. Almost a further third of cases investigated were resolved by negotiation and discussion; as mentioned above the service will always employ informal measures first before resorting to

formal enforcement action as this is often the quickest and easiest way of resolving issues. Formal action, with the rights of appeal against it that exist, can take a significant period to bring to a conclusion. For cases where there is no breach, almost all are closed before or at the 7 week review stage. For more complex cases there is a further review at 13 weeks if that case is still open at that point. Whilst therefore each case is brought to a resolution at the earliest opportunity, there is no set timescale within which all cases can be expected to be resolved. 3.5% of current cases have remained open after 5 years, these are usually complex cases which have involved formal action, applications and enforcement appeals processes (which rely on the Government's Planning Inspectorate for progress). Cases include ongoing monitoring of cases where compliance has been achieved but the site continues to be monitored, or where a breach is now being remedied over an agreed timescale.

4.3.3 The latest dataset available from the Ministry of Housing Communities and Government, 2018-19¹ provides data on LPA enforcement activity levels. The table below shows Leeds' performance and formal activity levels in comparison with the Core Cities.

Table 2: Enforcement activity across UK Core Cities

Planning authority	Enforcement notices issued	Stop notices issued	Temp stop notices issued	Breach of condition notices served	Planning contravention notices served	Enforcement injunctions granted by High Court or County Court	Enforcement injunctions refused by High Court or County Court
Birmingham	25	-	-	1	1	-	-
Bristol	32	-	-	6	-	-	0
Leeds	40	-	1	3	101	-	-
Liverpool	4	-	-	2	24	-	-
Manchester	27	6	3	1	76	-	-
Nottingham	2	-	-	-	3	-	-
Newcastle upon Tyne	7	-	1	1	15	-	-
Sheffield	12	-	-	4	6	-	-

4.3.4 From the Table 2 above, it is clear to see that Leeds activity levels are considerably higher than any of the Core Cities and that we served more contravention notices than Birmingham, Liverpool, Newcastle, and Sheffield combined. This illustrates that whilst the negotiation and informal enforcement activity is most effective in resolving cases, the authority will and does pursue formal action where it is found to be necessary.

4.4 Embedding the framework for planning enforcement matters

¹ MHCLG Planning Statistics Source: Table 130

4.4.1 Performance reporting

4.4.2 Additional scrutiny is brought to the Compliance Service and enforcement process as the service reports performance data and activity rates for the service to the Joint Plans Panel (JPP) bi –annually. An extract from the latest mid-year planning performance report to JPP is appended (Annex 1). Additionally an update report containing key cases (those where interest has been expressed by a Ward Member or Parish council in particular) for each ward is prepared and circulated to Members on a bi-monthly basis. Going forward, performance can also be reported to this Committee, to be consistent with the reporting on planning application performance as part of the annual decision - making assurance report for Planning.

4.4.3 Internal Audit

4.4.4 The service was subject to an internal audit in 2016 which concluded that the service had a good framework in place that cases are investigated, reported and actioned where appropriate and that escalation and appeal procedures are in place. The service received overall good assurance, and all items identified in the action plan have been implemented and remain operational in the service.

4.4.5 Member training

4.4.6 A Planning Enforcement Training and Workshop session has been run for Members in both autumn 2017 and autumn 2018 to outline the legislative framework, enforcement plan, processes and decision making of the service. A further session is to be arranged for early 2020 to which all Elected Members will be invited.

5. Corporate considerations

5.1 Consultation and engagement

5.1.1 The contents of this report have been shared with all officers with delegated authority set out in the council's constitution.

5.2 Equality and diversity / cohesion and integration

5.2.1 There are no implications for this report.

5.3 Council policies and the Best Council Plan

5.3.1 The Council's values include being open, honest and trusted; spending money wisely; and working with all communities. The Council's decision making framework sets out systems and processes which ensure information is shared in a clear and consistent fashion to enable the people living and working in the communities of Leeds to engage with the decision maker to ensure that community wishes and needs are taken into consideration. Whilst decision makers are required to consider whether the decision to be taken represents best value the systems and processes themselves are subject to continuous review to ensure that their implementation is practicable and makes best use of the Council's resources to achieve compliance with both the statutory and local framework.

Climate Emergency

5.3.2 There are no implications for this report.

5.4 Resources, procurement and value for money

5.4.1 The systems and processes in place to meet the requirements of the decision making framework do so from within existing resources. Given the assurances made by the Chief Planning Officer it is considered that the systems and processes in place continue to represent an appropriate use of resources and good value for money

5.5 Legal implications, access to information, and call-in

5.5.1 The Council's decision making framework meets the statutory requirements in relation to decision making and monitoring of the process ensures compliance.

5.6 Risk management

5.6.1 The positive assurances set out in this report show that the process around the referral process and enforcement matters is fit for purpose, embedded and routinely complied with and so there are no risks identified by this report.

6. Conclusions

6.1.1 This report sets out evidence to confirm the positive assurances given that decision making arrangements in relation to the member referral process for planning applications and enforcement matters are, up to date, fit for purpose, effectively communicated and routinely complied with.

7. Recommendations

7.1.1 Members are requested to consider and note the positive assurances provided in this report and future steps to provide additional assurance in the process.

8. Background documents²

² The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

Annex 1: EXTRACT from Joint Plans Panel report 14 November 2019

Planning Services performance report- quarters 1 and 2, 2019-20

3.6 Compliance activity

3.6.1 The number of enforcement cases received in the first two quarters of 2019/20 has been high, with 746 cases received. This is similar to recent years. As such the workload through the service remains substantial with a significant number of complex cases being investigated. The number of cases on hand has been reduced to approximately 900. And maintained at under 1000. A long standing service objective has been to maintain the number of cases on hand to under 1000. This is a key step in improving the overall handling of cases as it ultimately assists in reducing officer caseloads.

	Q1	Q2	Total
No of cases received	357	389	746
No of cases resolved	311	361	672
Category 1: Site visit same day/within 1 day. Target 100%	100% (5)	75%(4)	87.5%
Category 2: Site visit within 2 working days. Target 95%	88% (17)	85% (34)	86.5%
Category 3: Site visit within 10 working days Target 90%	98% 329/335	98% 343/351	98%

3.6.2 Cases received and resolved and performance in undertaking initial site visits

3.6.3 Performance in undertaking initial site visits has generally been maintained. There has been a drop in Category 1 and 2 visits being made in time. Whilst this relates to a small number of cases (1 category 1 and 7 category 2 cases missed targets) it is a concern and is symptomatic of recent pressures in the service. All of these missed visits were subsequently visited within 2 days of the target. The majority of cases (category 3) have been visited within target times. The overall number of open cases on hand currently stands at 906. This is slightly increased from the last reporting period but remains within the service target of approximately 1000. Of particular interest is the age profile of cases with an increasing proportion of current case load being under 13 weeks old which is a long standing objective of the service.

3.6.4 Outcomes of cases resolved

3.6.5 The number of complaints investigated that are found to either involve no breach of planning control or are minor infringements over the period sits at just over 45 %. This has gradually increased from previous reporting period and helps demonstrate the demands on the service for investigation of non or minor infringements of planning control. A further 10% percent of cases are closed following investigation as not expedient to pursue, as the breaches identified are either minor, or informal action to regularise them has not resulted in compliance and it is not considered justified to pursue formal action. The remaining 45% of cases which have been closed involve significant breaches which have been resolved to the satisfaction of the Council through negotiations, granting planning permission or formal enforcement action.

3.6.6 Ward Member meetings have continued during the year. Invitations are sent out with the key cases list which continues to be sent to both ward members and parish councils with updates on priority cases within each ward.

	Q1	Q2	AvTotal
No Breach*	46%	50%	48%
Resolved by negotiation	28%	26%	27%
Breach but de minimis/ not expedient	10%	11%	10.5%
Planning permission/ CLU granted/ appeal allowed	14%	12%	13%
Enforcement /other notices complied with	2%	1%	1.5%

**Includes matters that are "permitted development"; where no development or material change of use is involved; matters that were time exempt from enforcement action on investigation; or where approved plans and conditions have been found to have been complied with.*

3.6.7 Enforcement and other notices

3.6.8 A total of 86 enforcement and other notices have been served during the year so far. This is a continuation of activity levels of previous years and an increase on the last reporting period. Leeds continues to take more formal action than all the other core cities by some distance reflecting the importance Members place in Leeds on the service. The following numbers of notices have been served:

	Q1	Q2	Total
Planning Contravention Notices / Section 330 notices	23	24	47
Breach of Condition Notice	2	4	6
Enforcement Notice	14	17	31
S215 Untidy Land Notice	1	1	2
Temporary Stop Notice	0	0	0
Stop Notice	0	0	0

3.6.9 The compliance service continues to draft and issue its own notices with input from legal officers only on the more complex cases. This is continually monitored and whilst it does carry some risk, the resource savings in doing this are significant. It does however place increased pressure on case officers in progressing cases within the service and requires additional on-going training.