

Date: 10<sup>th</sup> January 2024

Report of: Chief Planning Officer

Report to: Scrutiny Board (Infrastructure and Inclusive Growth)

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

## Brief summary

- 1 The purpose of this report is to evaluate the outcome of a pilot project (not to display third party comments online, in respect of planning applications) and to take a view on next steps. This evaluation is comprised of a series of aspects which need to be balanced and taken as a whole. These are: the impact on public participation in the planning process, the impact on financial and resourcing issues and finally impact on compliance with legislation.
- 2 In June 2023, the Local Planning Authority (LPA), commenced a 6-month pilot project to no longer publish third party comments received on planning applications online, (via Public Access, the Council's statutory register for planning applications), on the Leeds City Council website. The purpose of this was driven by a number of interrelated factors. These included, the need to manage and deploy resources more effectively (given the extent of the Council's financial challenge), managing risk (in respect of General Data Protection Regulations [GDPR] data breaches, through the accidental disclosure of information), the need to provide clarity for applicants on what revisions to schemes may be necessary and the perspective brought by researching and balancing what is considered 'necessary' (for the purposes of operating a sufficiently transparent planning process). Whilst also removing the fear of reprisals from applicants/ objectors and supporters alike, through comments on planning applications received. The decision to commence with this pilot was taken in consultation with the Executive Member for Sustainable Development and Infrastructure.
- 3 During the pilot period, staff capacity has been reprioritised has been used to continue to make improvements to Public Access (PA), to work on other urgent projects and to undertake wider business improvements to drive operational efficiencies in the context of the Council's challenging budget pressures (whilst operating under the requirements of legislation in relation to access to information). It should be emphasised also that the on-going reforms to the planning system, have placed additional demands on the service regarding new legal requirements and business processes which have had to be rolled out and established.

4. Whilst there is no statutory requirement to publish third party comments online (although this has become custom and practice in Leeds), a number of concerns were raised about the legality of the change, a perceived loss of participation and transparency in the planning process and the inability to see others comments, to inform one's own comments
5. Scrutiny Board (Infrastructure, Investment and Inclusive Growth) agreed to the Executive Member for Sustainable Development and Infrastructure request that they consider the conclusions of the 6-month pilot.

## Recommendations

- a) Members of Scrutiny Board are recommended to note the outcome of the pilot and the evaluation set out in this report,
- b) Members are requested to consider the conclusions and next steps set out in the final section of this report, with a view to a Delegated Decision being taken by the Chief Planning Officer, to not resume the publication of third-party comments.

## What is this report about?

The report sets out the context for and the outcomes of the 6-month pilot project (not to publish third party comments) and provides an evaluation of the impacts and successes of the publication of public comments. The final section of the report (conclusions and next steps) advocates that the publication of third-party comments should not resume, with a view to the Chief Planning Officer making a formal decision under delegated powers.

## Framework for decision making

In terms of overall context, the framework for decision making in relation to planning matters in England and Wales is Plan-led and is legislated by Acts of Parliament and Statutory Instruments. This requires the Local Planning Authority (LPA) to prepare plans, as part of a Plan-led approach to set a planning strategy, policies and site allocations for future regeneration and development. The Leeds adopted Local Plan sets out the Council's vision and strategy for planning the area until 2028.

In determining planning applications in respect of this planning strategy, Development Management activity is guided by legislation, with the main legislation being: The Town and Country Planning Act 1990, which sets the legal framework for determining planning applications and which is underpinned by the Town and Country Planning (Development Management Procedure) (England) Order 2015, which sets out the detail requirements of the LPA. Planning law dictates that all decisions on applications for planning permission, should be made in accordance with the Development Plan, unless material planning considerations indicate otherwise.

LPAs are required to undertake a formal period of publicity prior to deciding a planning application. This is prescribed in, [article 15 of the Development Management Procedure Order](#) (as amended). In addition to individuals who might be directly affected by a planning application, anyone can respond to a planning notification, including community groups and specific interest groups.

Decisions on planning applications must be made in accordance with the adopted Development Plan (and the Policies therein), any other material considerations, legislation and case law. Consequently, decisions are not therefore made on political or 'popularity' grounds. For example, although there may be objections to a development, it does not necessarily mean that the application is unacceptable in planning terms and needs to be altered or refused to address the concerns raised. Conversely, if there are no public objections to a development proposal, this does

not make it automatically acceptable. The role of the LPA is to assess the applications within a statutory timeframe against the adopted Local Plan Policies, whilst also having regard to the National Planning Policy Framework (NPPF).

### **Publishing Third Party Comments**

There is no statutory requirement to publish third party comments received in respect of a planning application. For information, a number of Core Cities and local authorities have never or have recently ceased publishing third party comments online. These include Nottingham City Council, Manchester City Council, Croydon Council and City of Bradford Council. All comments received must be considered as part of the decision-making process. However, in order for comments to be afforded weight as part of this process, they must be related to material planning considerations in respect of the application.

In terms of the publication of comments, the Planning Advisory Service (PAS) advises that, “...*the legislation is clear that they do not require a LPA to disclose to the public confidential information (i.e. information the disclosure of which is prohibited under an enactment, such as data protection legislation<sup>1</sup>*” and further states “*there is no requirement to publish consultation responses, and the decision to publish or not is the LPA’s to take.<sup>2</sup>*”

Section 3(2) of the Data Protection Act describes personal data as:

*“...any information relating to an identified or identifiable living individual”.*

*13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.*

*14. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.*

### **General Data Protection Regulations (GDPR) – Managing Accidental Disclosure in Relation to Third Party Comments**

Following the introduction of the GDPR in 2018, there has been even greater emphasis on ensuring comments did not breach data protection legislation. Leeds City Council, as the “data controller”, is responsible for any data provided and in the event of an accidental disclosure of personal data, it would breach GDPR. It should be noted that Basildon Council (in respect of the LPA) was fined £170k for the accidental disclosure of personal data online in relation to a planning application. Consequently, there are significant financial and reputational risks in managing such data.

Following the introduction of the GDPR, the LPA in Leeds established a Publications Team to undertake the vetting and redaction of comments. It should be noted that comments would often routinely disclose personal information within the body of their comments, often relating to protected characteristics and location data, despite disclaimers on the Council’s website asking for the comments not to include personal information. Following this redaction process, only then after screening would comments be published online to the Public Access (PA), (the statutory planning register). Undertaking this work has required dedicated staffing resources, to help manage the process. This has been necessary not only to adhere to the requirements of the legislation but also to deal with the high volumes of representations on planning applications being received by the service. For example, in 2022-23, the LPA was in receipt of almost 9,000 comments on planning applications received.

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<sup>1</sup> PAS Planning and GDPR Guide June 2021

<sup>2</sup> ibid

Associated with this work has been resources required to deal with complaints from both applicants and commenters arising from the public comments, disagreeing with the redaction, raising non-material matters, civil or criminal matters, neighbour disputes and often personal opinions of the developers/ agents/ applicants (which in planning terms are not material), but when published online, such comments caused distress or offence to various parties involved. Comments could also at times be misleading, with inaccurate information sometimes being presented.

In addition, the service had regularly been contacted by residents with planning concerns about an application but who were reluctant to submit their comments in writing, given that they would be published online and available for all to view as they feared repercussion for doing so, to the detriment of engaging in the planning process.

More recently also, PA had increasingly been used inappropriately as a platform for antagonistic correspondence between applicants and objectors - with the comments being conveyed like a "chat room". Additionally, despite the best efforts of the service, there had been a number of minor data breaches which were reported through the Council's data breach process, causing discomfort for those involved as well as generating significant work for the service to investigate and rectify. As noted above, such breaches expose the LPA (and the Council) to financial penalties and also reputational risk.

### **The Implications of New Legislation**

The recently enacted Levelling Up and Regeneration Act (LURA) introduces key provisions to bring forward the Government's levelling-up agenda, whilst also making statutory changes that underpin a number of planning reforms. It contains proposals to enable the digitisation of the planning system, introduce changes to local plans, national development management policies, planning enforcement, section 106 Agreements, the Community Infrastructure Levy and environmental outcome reports. The LURA is also the driver for a more rigorous and demanding planning performance regime. In this context, there will be new and additional burdens for the LPA to resource from the existing establishment, placing the service under greater pressure to deliver core statutory services.

### **Pilot Project - Non Publication of Third Party Comments**

Taking the above factors and drivers for change into account, a business decision was taken to no longer publish third party comments received on planning applications online via PA on the Leeds City Council website for a pilot period of 6 months. This commenced on 6<sup>th</sup> June 2023, as a basis to ascertain, if the above identified issues could be mitigated through not publishing comments and resources could be utilised differently, without any prejudice to the robustness of decision making.

This decision was not taken lightly, with consideration given to the public perception of Planning, the need to balance the need for transparency and participation in the planning process, whilst protecting the privacy of third parties. Given the sensitivities of these issues, it was agreed therefore that at the end of the pilot period, an update on the outcomes and conclusions of the pilot would come before the Scrutiny Board (Infrastructure and Inclusive Growth), for consideration.

It should be noted that following commencement of the pilot, there were some concerns raised by particular groups (including Parish and Town Councils) and individuals about the approach being taken. These included comments about the legality of the change, a perceived loss of transparency and involvement in the planning process and concerns that the inability to see and use others comments, as being detrimental to inform their own comments.

### **Evaluation of the Pilot**

In evaluating the outcomes of the pilot, a series of interrelated factors have been identified by the service taking into account and addressing the feedback received and concerns raised by third

parties, as a basis to assess the merits of the pilot. These in turn have enabled the “impacts” and “successes” of the pilot to be considered. These factors can be summarised as follows:

- Public Participation and Transparency in the planning process,
- Resource Management,
- Compliance with legislation.

The subsequent sections of the report evaluate the pilot in relation to these factors, before drawing some overall conclusions and next steps, in the final section.

### **Public participation and Transparency in the planning process:**

#### **Participation levels**

In assessing the impact upon participation levels during the pilot period, the number of comments submitted in this time has been counted. The purpose of this is to establish if there has been a ‘drop off’ rate, associated with members of the public not wishing to submit comments because they will not be published online and for this to be compared to the position in the same period last year - when comments were being published online. The summary Table below compares numbers of comments submitted over the time periods, June to December 2022, (when comments were published) and June to December 2023, (when comments were not published):

<b>Number of comments received 6<sup>th</sup> June to 6<sup>th</sup> December 2022</b>	<b>Number of comments received 6 June to 6 December 2023</b>
4,343	7,108
<b>Number of planning applications received 6<sup>th</sup> June to 6<sup>th</sup> December 2022</b>	<b>Number of planning applications received 6 June to 6 December 2023</b>
2,313	1,998

Examining the numbers of comments submitted during the pilot period, it appears that there has not been any impact in terms of a drop off in participation in the planning process, even considering a 14% reduction in the numbers of planning applications being submitted compared with the same period last year. Numbers of comments received on applications have increased by 39% during the pilot period in comparison with the same period last year.

The process remains unchanged in terms of members of the public, groups, organisation and others’ ability to make comments on planning applications, as have the other opportunities for engagement in the planning process. The Council’s Statement of Community Involvement<sup>3</sup> sets these out:

- Plan making- extensive involvement of the public from the - Core Strategy, Site Allocations Plans, Local Plan, through to Neighbourhood Plans; Leeds is considered a trailblazing authority for its approach to neighbourhood planning,
- Ability to making comments on individual applications, focussing on material planning matters,
- LPA reconsulting/ renotifying where appropriate on individual applications; there is no statutory requirement to do so,
- Applications which go to Plans Panel present opportunities for public speaking, there is no statutory requirement for this provision,
- Appealed applications, third party involvement, applicant involvement, Rule 6 Status.

#### **Perceived lack of transparency**

Concerns have been raised also about the perceived lack of transparency in the planning process, as a consequence of not being able to see other people’s verbatim comments. Whilst freedom of

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<sup>3</sup> [Statement of Community Involvement \(LDF\) \(leeds.gov.uk\)](https://leeds.gov.uk/statement-of-community-involvement)

speech is clearly necessary and people are able to make any comments they wish, in planning terms, only matters which raise material planning concerns are relevant to the assessment of the application. In this context, assurance can be given that transparency is being maintained with a clear summary in the officer report of the comments raising material matters which can be taken into consideration as well as an acknowledgement of non-material matters. Third parties are clearly able to identify where their material planning concerns have been taken into consideration and where non-material matters have been acknowledged but not taken into consideration. Appendix 1 is included to show an example of how comments have been clearly summarised in an officer report on an application. Whilst there is no legal requirement to publish copies of an officer report for each planning permission, on the statutory planning register, from a Leeds LPA perspective, this will continue in the interests of transparency.

Comments on individual applications are publicly available on request as per the planning legislation, and the FOI process has also been used as the mechanism for this, to date during the pilot period 29 requests have been made from members of the public and six from elected Members.

### **Inability to see other peoples' comments to guide own comments**

The service received representations from Town and Parish Councils, other amenity groups and Ward Members, who raised concerns about their comments not being visible on PA, their inability to see what other people had said, to guide their comments and a perceived detrimental impact on freedom of speech.

The service has acknowledged whilst it may be considered useful to see other comments, it is by no means essential however to make one's own comments. Other comments can sometimes be misleading, misinformed, be offensive, or GDPR non-compliant. Members of the public and others are therefore being encouraged to form their own view on an application focussing on material planning matters to inform their own comments. As emphasised above, these are the only matters which the LPA can take into consideration in the determination of the planning applications.

Planning can be complex and sometimes difficult to understand, consequently the service has been trying to help guide and support the submission of effective comments directed towards material considerations (see below). One way the service has attempted to facilitate this, is through enhancements to PA. Around 70% of all comments received by the LPA are made via PA. Prior to the pilot, when a member of the public wished to make a comment on PA, they went to the application page and click on the "Have your Say" tab. A template form is presented to complete, including a free text box for the main body of their comments. However, in September 2023, PA was augmented to include 'tick boxes', identifying the most common material planning considerations, for customers to select those which they feel are appropriate to their comment. An "other" box is also included, the purpose of this is to ensure that the template does not restrict comments that can be made, meaning all eventualities are covered. This guides customers to focus their responses on material matters which the LPA can take into consideration and avoids focussing on those which in planning terms are not relevant. The screen shot below, demonstrates how this looks on PA.

- Highway Safety/Parking
- Layout and Density of Buildings
- Listed Building/Cons Area/Parks Gardens
- Nature Conservation
- Noise and Disturbance
- Other
- Over Shadowing/Outlook (not view)
- Overlooking/Privacy
- Risk of Flooding
- Scale, Design, Visual App and Materials
- Sustainability/Climate Change
- Trees and/or Landscaping

It would inhibit a member of the public's right to free speech if they were required to have knowledge of the planning rules or of the detailed history of a site before commenting. However, aiding and helping to guide the public to make high quality comments, and covering material planning matters is considered to be a positive development. Freedom of speech remains important, however, and even in the context of the above to help support effective comments being made, the pilot does not stop people saying what they wish. People can still raise any matters of concern and that may still include non-material matters, but with this additional guidance, anecdotally there are early positive signs that the comments received via PA are more focussed on the matters which can be taken into consideration. By being more informed, people therefore will know that their comments carry weight because they deal with matters which can be considered by the LPA, thus having a positive impact on the planning process.

### **Transparency of consultee comments**

The comments of statutory technical consultees (such as the Environment Agency) are visible on the PA system, this remains unchanged. However, the LPA has a statutory duty to notify Town and Parish Councils (TPC) and Neighbourhood Forums (NF) of applications in their area of interest, but their comments do not carry the same weight as a statutory technical consultee. Under the pilot, TPC and NF comments were not originally published online and were treated in the same way as other third-party comments. However, following concern that their comments would also not be visible on PA, the service committed to investigate whether this could be changed. After reviewing a sample of TPC and NF comments, there was assurance that the comments received from such organisations would be neither defamatory or breach GDPR and it was therefore considered to be low risk to publish their comments. Work was undertaken also, to find a solution for their comments to be published without the need for staff intervention; this was important in the context of the need to generate operational efficiencies and deliver the service within existing resourcing levels. A solution was found and shared at a conference for Town and Parish Councils held on 18 October 2023 and roll out began on 26 October 2023 for those TPC who wish their comments to be published online. Neighbourhood Forums were also contacted on 1<sup>st</sup> November 2023 offering the same solution. This is optional, although to date 19 TPC have taken up this offer as well as three Neighbourhood Forums.

Taking the above into consideration, i.e. that there has been an increase in participation in the planning process in terms of number of comments being submitted, that focus is being directed to support members of the public and others to make more effective representations, community organisations' comments can be published online and transparency maintained with comments clearly summarised and included in the officer report, it is concluded that there has been no

negative impact of the pilot on the participation in the planning process and in many respects due to the work undertaken, there have been positive impacts on the planning process.

## **Resource Management**

As highlighted above, a 'Publications Team' was established to review and where appropriate redacting comments; in the 12-month period leading up to the pilot this amounted to 5.5 hours per week in total. In that period, each of 8,055 comments received needed to be screened and 1,352 needed redacting for GDPR compliance. Additional time was expended dealing with data breaches and consequent complaints, approximately 4 hours per week. In staffing costs this equates to almost £10,000 per year. However, in addition often there are managers involved at a senior level in the event of a breach, including at Head of Service level as well as senior officers in the Information Governance team who assist in an advisory capacity. This is a time-consuming activity to carry out an investigation and diverts officers away from core business activity.

During the pilot period these resources are no longer required to undertake the work on those comments being submitted via PA and the complaints and data breach work. Consequently, the staff time saved in not having to undertake redaction work, follow up on complaints and deal with data breaches, has allowed the service to concentrate on other areas to improve business systems, concentrate on core activity, resourcing other priority projects, explore other income streams and undertake other activities which add value to the planning process, for both internal and external stakeholders. As a result, the pilot has allowed the service to better manage fluctuating workloads and the other necessary core statutory duties within the resources available (this has included Validation, managing the planning appeal process and servicing the three Development Management Panels).

In addition, this increased capacity and agility has enabled the service to respond effectively to a time-limited (and income generating) major project on behalf of HM Land Registry. This was delivered on time and therefore achieving income of £200k (to the service and the Council) for the timely completion of the work.

Furthermore, direct savings have been made through not needing to recruit to one vacant position (at a B3 grade) in the Publications Team; this is entirely in accordance with the Council's recruitment and vacancy release process to reprioritise work within existing resource and has directly contributed to meeting the Council's 23/24 funding gap. Additionally, the instruction from Directors as part of the Council's Financial Challenge is to "stop all non-essential spend that is not definitely needed for the delivery of a service, (however small)" and this non statutory work falls into this category.

It was always the intention of the service that during the pilot period, there would be a continued review of processes to find ways to maintain transparency whilst balancing the privacy of third parties. Prior to the pilot, these areas of work were negatively impacted due to the lack of officer capacity. Through this reallocation of staff resources, the service has been able to undertake a range of tasks and workstreams both connected to the area of public comments but also with a wider remit of streamlining processes and generating operational efficiencies needed in the context of the Council's budget challenge.

Within this context, a range of work and enhancements, within the parameters of pilot, has been also undertaken in response to some of the concerns raised; these were shared with the Joint Plans Panel in September 2023. These, and other matters are summarised and described below:

- Organised and held a Town and Parish Council (TPC) conference to support such organisations in making more effective representations and allow two-way dialogue between TPC and the LPA,



- Developed a system to allow TPC comments and Neighbourhood Forum comments to be published online without any further staff intervention, (reflecting their status as statutory consultees in terms of being notified of new applications in their area)
- Provided better information and support for members of the public to make more effective representations,
- Developed new reporting tool using PowerBi software which case officers can use by entering in a planning application number and extracting the details of all representations made via Public Access into a single Word document making this information available more quickly and efficiently than the previous process which required each comment to be extracted individually. This saves a significant amount of officer of time,
- Developing a new reporting tool for elected members which highlights the material planning matters that are of concern locally on individual applications, to help guide their own representations, as appropriate. The prototype was demonstrated at the meeting of the Joint Plans Panel in September 2023 with Members giving positive feedback on its development. Final amendments and access rights are being made to this and it could be rolled out in early January 2024. An example of a report for an application is attached as appendix 2.
- Engaged with the Joint Plans Panel on a number of enhancements and system changes on Public Access to help support the effective writing of representations, focussing on material matters,
- Clearer timeline of the status of a planning application on Public Access with supporting text to explain each stage,
- Process for collecting and displaying permitted development rights to make this quicker for officers to confirm where this has occurred, and reduce the risk of accidental overlooking of this information
- Streamlined public speaking protocol to make the task less resource heavy for the Plans Panel Team to manage without impacting on the rights of speakers,
- Ongoing development of the Member Planning SharePoint site which promotes self-service rather than members having to contact officers for information, saving time for all parties,
- Development of a range of performance dashboards supporting the work of Development Management to respond to legislation changes, challenges and address emerging issues quickly,
- Community Infrastructure Levy Status checker on the LCC website promoting self-service rather than members and the public having to contact officers for the information.
- Developing a new reporting tool to extract the comments requested through the Freedom of Information (FOI) and Environmental Information Request (EIR) process, to use existing staff time more efficiently.
- In consultation with the Planning Inspectorate, revised our system for sending comments as part of the appeal process, thus saving significant amounts of officer time

Further work is also in the pipeline if there continues to be the officer capacity to take the workstreams forward, including the investigation of publishing ward member comments online by offering them the same solution and systems as TPC and Neighbourhood Forums.

Given the increased officer capacity to take forward essential business improvements required to balance service budgets, manage capacity and deliver statutory services in a more streamlined way, it is concluded that the pilot had a positive impact.

### **Compliance with legislation**

A key driver for conducting the pilot was to reduce the exposure to the Council of accidental disclosure of personal information. As emphasised above, there are significant financial

consequences of a data breach occurring. The Table below shows the number of data breaches over the recent years despite the redaction processes in place.

Date	Incident numbers
2019	3
2020	2
2021	4
2022	5
2023 (Jan to June)	1

Whilst it could be considered that these numbers are relatively small, it would only take a single serious data breach to have financial and reputational repercussions. This risk is accentuated by the high volume of applications and comments being received by the LPA and the numbers of comments in need of redaction (beyond names and addresses). It should be emphasised that around 15% of the total number of applications received are returned as unacceptable, with a further 5-10% to make GDPR compliant. The probability of disclosure is therefore very high, notwithstanding the interventions in place for this to be managed and mitigated. Clearly, by no longer publishing comments, it removes the risk of accidental disclosure entirely and during the pilot there have been no breaches.

As outlined above, there is no legal requirement to publish third party comments online; also, the Council must be mindful of its legal duty to protect the privacy of individuals personal data. In this context, the service is compliant with both planning and GDPR legislation.

As mentioned above number of requests for comments were made through the Freedom of Information process (35 in total) in the pilot period; 100% of responses were provided with the statutory timescale. These requests were able to be answered on time due to the new reporting tool developed to extract the comments easily and quickly from the system, within minutes; previously such information took longer to obtain as it required manual extraction.

Given the above, it is considered that the pilot had a positive impact on compliance with relevant legislation.

### **Conclusions and Next Steps**

In coming to an overall conclusion, the concerns expressed about the cessation of publishing third party comments are appreciated and understood. In fulfilling our duties and responsibilities as an LPA, public participation in the planning process is both fundamental and necessary. This is an imperative not only in dealing with the immediate local impacts and opportunities associated with development proposals but also to achieve the longer-term ambitions of Leeds in the pursuit of sustainable development.

It should be emphasised that the pilot has not prevented or compromised the ability of public participation in the planning process. The Council's recently adopted Statement of Community Involvement sets out opportunities for engagement and participation, with the submission of comments on applications being one element of this. Only the ability to see others comments online, for which there is no statutory basis, has changed.

In summary, the desire to retain comments online, promoted by opponents to the pilot, appears to be twofold, (i) a perceived lack of transparency in the planning process (by non-publication) and (ii) an inability to see what others say, to inform one's own comments. In terms of transparency, the

principal way the LPA engages with third parties in respect of planning applications is largely through publicity on applications received by the LPA - inviting comments and via representations received. These channels of communication have remained throughout the pilot and have not been stopped by the non-publication of third-party comments.

In terms of observations on comments received, applicants and third parties may not agree with what others say in their comments, but it is their right to exercise their freedom of speech. Whilst it is not the role of the LPA to act as arbiter of those comments, it does have a legal duty to protect the personal information of third parties and that comes at a significant cost in staffing and resourcing terms. Representors do not need to see others comments to make their own or to base their own comments on them. Through direct experience, the service has recognised that at times, comments can be misleading, inaccurate, inappropriate and often raise matters which in planning terms are 'non-material'. The role of the LPA is to consider the comments, have regard to material matters, appropriately fact check and come to a balanced view/judgement on the merits of an application. This view is clearly articulated in the officer report, which is made available on PA (the Planning Register).

In response to issues which have been raised about the pilot and within the context of the commitment of the service to continued improvement, steps have been taken to help members of the public and others make more effective comments focussing on material matters. The focus of this is to ensure representors are more aware of the considerations which can be taken into account, whilst understanding that the civil or non-material matters that they may wish to still raise in exercising their freedom of speech, cannot be considered. For clarity, these matters are transparently reported and included in the officer report.

It is apparent that publishing comments online comes with risks, to individuals who feel unable to participate in the planning process due to fear of repercussions, and who may get caught up with inappropriate commentary from other third parties and to the Council, for whom there are reputational and financial risks in the event of an accidental disclosure of personal information. The costs and resource input required to manage this process are considerable, at a time when the service is facing increased and competing demands. This relates not only to staff time (in dealing with redaction and in following up issues such as complaints) but also commits resources to an activity, which is non statutory, when statutory demands and performance management requirements of the service are increasing. Fundamentally also, despite best efforts with previous systems and processes, there is no 100% guarantee against accidental disclosure of personal information. The number of data breaches whilst not high, as highlighted by the case at Basildon Council, only one data breach occurred in that instance for the LPA to receive a significant fine from the Information Commissioners Office.

The pilot period has been an invaluable process to consider, assess and evaluate the merits of the publication of third-party comments. The perceptions regarding a loss of transparency in the planning process is appreciated and understood. As a responsible LPA, the service would not want to diminish the opportunities of the public and other stakeholders across Leeds to participate in the planning process and remains committed to community engagement in the broadest sense. As the evaluation of the pilot has demonstrated, transparency in the process has not been compromised, despite commentary that it has. More strategically, in respect of the publication of third-party comments there are a number of key drivers, risks and resourcing issues, which combine to signal that the resources of the service need to be deployed differently. This is necessary, not only to respond immediately to the Council's significant financial challenge but importantly to facilitate greater agility to deliver the new Planning requirements of the LURA and the business processes necessary to underpin secure its implementation, now and into the future.

From the perspectives of Public Participation and Transparency in the Planning process, Resources Management and Compliance with Legislation, the evaluation set out in this report has concluded

that these matters have not been compromised or undermined by the pilot project. Moreover, it has been demonstrated that the measures introduced have enabled a greater focus upon material planning considerations and the participation in the planning process from some, who previously felt inhibited to do so. Furthermore, the pilot has also removed a risk of data breaches and the financial penalties associated with this. In relation to Resource Management, the scale of the City Council's financial challenge is such and the context of increasing statutory demands upon the Planning service, resources need to be deployed in the most efficient and proportionate way to meet these complex and ongoing pressures.

Consequently, taking all of the above factors into account, the following next steps are advocated:

- i. a continued commitment to securing on-going business improvements in delivering the Planning service, which meet legislative requirements,
- ii. the continued agile management of resourcing pressures, with the context of the City Council's budget commitments and the financial challenge,
- iii. to not to resume the publication of third-party comments, on the basis of the conclusions, set out in this report and for a Delegated Decision by the Chief Planning Officer to be taken, to reflect this change.

### **What impact will this proposal have?**

- 1 No implications in terms of participation in the planning process or decision making. There is no statutory obligation to publish comments online, many LPAs have never published comments online, many other LPAs are considering this move due to the increase in data protection breach risks and need to focus on the delivery of statutory services in the context of challenging budget pressures. In Leeds, this needs to be balanced against the historical expectation that comments will be available. However, the service provides assurance that comments raising material matters continue to be taken into consideration, the time saved from not doing the screening and redaction work can be expended instead on core business tasks, provides capacity for exploring further business efficiencies whilst protecting the rights of an individual's personal data and minimising the risks to the Council of a data breach.

### **How does this proposal impact the three pillars of the Best City Ambition?**

Health and Wellbeing

Inclusive Growth

Zero Carbon

2

### **What consultation and engagement has taken place?**

Wards affected:

Have ward members been consulted?

Yes

No

- 3 Consultation on the pilot was undertaken with the Leader of the Council, Executive Member for Sustainable Development and Infrastructure, Member and Chairs of the Plans Panels. Further work has been undertaken with the Joint Plans Panel (a meeting of the three Plans Panels and the Development Plan Panel) on some of the proposed changes/ enhancements to Public Access systems and reporting processes.
- 4 Engagement with the Town and Parish Council took place at the Town and Parish Conference in October 2023. Through discussions it was agreed that where TPC wished for their comments to be published online, given the assurance around their content, this would be implemented from

26<sup>th</sup> October. This offer was further extended to the Neighbourhood Forums in Leeds in November 2023.

### **What are the resource implications?**

- 5 Not publishing comments has allowed the resources that the service has to be deployed in the most effective way, allowing a more flexible deployment of staff to deal and react to service priorities, such as the HMLR work. However, there are considerable resource implications of reverting back to the procedure pre-pilot. A large number of comments remain in email or letter format and therefore still require work to attach them digitally to the planning record; during the review period in particular two schemes generated hundreds such letters. Without having the burden of dealing with PA comments this work was manageable within existing resources, if all comments were published online with the associated work required to make them GDPR compliant, the service would need additional resources to carry out this function. This would entail filling any existing vacancies for this task, when these resources are needed to support the service in managing other priority workstreams. In the current challenging financial climate, there is no expectation of additional resources for any of the work the LPA has to carry out. There are concerns already about the resourcing of some of the new tasks and functions being brought about through the LURA and the Governments new and more stringent performance regime. These circumstances are therefore placing additional demands on the service, at a time when staff well being and resilience remains a key Council priority.

### **What are the key risks and how are they being managed?**

- 6 The risks to the Council on inadvertent data breaches is being managed through this process by not publishing the comments. Comments have to be made available on request and this is being managed through the Freedom of Information process, with 100% of queries responded to in time.

### **What are the legal implications?**

- 7 There is no statutory requirement to publish public comments on applications online so there are no legal implications arising from the recommendations in this report.

### **Options, timescales and measuring success**

#### **What other options were considered?**

- 8 There were a range of options considered prior to commencing the pilot and these remain relevant:
- 9 Resource the team to an appropriate level to allow for the screening and redaction of comments made on planning applications before they were made available online via Public Access. A number of accidental disclosures, complaints arising from a perceived lack of redaction/ unnecessary redaction, delays in publishing comments added to the resource burden. In the context of the need to focus on statutory services and diminishing resources this option is challenging to pursue.
- 10 Disclaimers have been used on the Council's website to direct people to not include personal or defamatory content, but such comments continue to be submitted and the Council as data controller has lawful responsibility for the handling of such information appropriately.
- 11 The functionality of the Public Access system was investigated to see if name and address details could be removed from the comment but this is not possible and does not address the issue of personal or inappropriate information being contained in the body of the comment.

Artificial Intelligence was also investigated as a solution; however, the technology is not sufficiently advanced to be able to identify and auto redact every possible permutation of content in public comments.

### **How will success be measured?**

12 There are no hard metrics to measure success, instead success has been measured through the lenses of Transparency in the planning process, Resource Management and Compliance with legislation to provided a rounded picture of impact and success

### **What is the timetable and who will be responsible for implementation?**

13 The pilot period ended in December 2023 and the decision to make this a permanent change lies with the Chief Planning Officer with the implementation delegated to Officers. The permanent arrangements will take effect from 31st January 2024.

### **Appendices**

- Attached, appendix 1 and 2

### **Background papers**

- None