

PLANNING APPEALS

Lead Officer: N White – Scrutiny Support Officer

Recommendation: that the Panel:

(A) recommend to Council that the:

- (1) amount of planning decisions that are made by delegated authority should be increased,
- (2) procedures for elected members to speak at Planning Panel meetings should be reviewed with the aim of ensuring that members rights to speak at Planning Panel are the same as those for members of the public,
- (3) Panel's procedures should be amended to allow the possibility of a member of the public to speak at more than one meeting on a planning application if the need exists,
- (4) Panel's members should be advised that the use of pre prepared written statements is not good practise and encourage them not to use such statements in future,
- (5) Panel's Members be made aware that a decision to refuse planning permission made on unreasonable grounds could leave the council open to an award of costs against it,
- (6) Chairman of the Planning Panel be involved in the process to ensure that a Planning Panel's reasons for refusal of planning permission are correctly recorded,

(B) recommend to the Executive that greater priority and resources should be given to ensuring that the publication of the final version of the Copeland Local Plan 2001 – 2016 is achieved in the near future,

(C) recommend to the Member Training and Development Panel that training sessions on the role of Councillors in Planning take place every year and be for all members of the Council,

(D) note that the Economic Development and Enterprise Overview and Scrutiny:

- (1) would like a report to be submitted to that Committee in six months time on the changes that the Panel has made to its procedures as a result of this review and the effect of those changes, and

- (2) has established a further task and finish group to look into the Council's Planning and Building Control Enforcement.

1. BACKGROUND

The Economic Development and Enterprise Overview and Scrutiny Committee at its meeting on 11 June 2007 agreed to a task and finish group being established to look at how appeals against planning decisions are dealt with by the council.

The Task and Finish Group has completed its work and reported to the Economic Development and Enterprise Overview and Scrutiny Committee at its last meeting on 13 August 2007. The report of the Task and Finish Group is at Appendix "A".

2. CONCLUSION

The Overview and Scrutiny Committee agreed to the recommendations of the Task and Finish Group and these are detailed at the recommendations at the head of this report.

It also agreed that a report should be submitted to that Scrutiny Committee in six months time on the changes that the Panel has made to its procedures as a result of this review and the effect of those changes. This would enable an analysis and reassessment of these changes to ensure that they are giving the results that were intended.

It further agreed that another task and finish group should be established to look at the Council's Planning and Building Control Enforcement.

The Committee noted that in respect of recommendation (A) it was now only Government advice and no longer a target that the amount of planning decisions that a council should take as delegated decisions be 90%.

The Panel is asked to consider these recommendations and to recommend on to the appropriate body any changes to its procedures it wishes to make in light of these recommendations.

Contact Officer: Neil White, Scrutiny Support Officer

Background Papers: None

List of Appendices: Appendix "A" – Report of the Planning Appeals Task and Finish Group

**Economic Development and Enterprise Overview and Scrutiny
Committee – 13 August 2007**

Item 11

PLANNING APPEALS

LEAD OFFICER: Tim Capper
REPORT AUTHOR: Neil White

Recommendation: that the Planning Panel be recommended that it:

- (A) consider whether it should increase the amount of decisions that are made by delegated authority,
- (B) give greater priority and resources to ensuring that the publication of the final version of the Copeland Local Plan 2001 – 2016 is achieved in the near future,
- (C) review the procedures for elected members to speak at Planning Panel meetings with the aim of ensuring that members rights to speak at Planning Panel are the same as those for members of the public,
- (D) should amend its procedures to allow the possibility of a member of the public to speak at more than one meeting on a planning application if the need exists,
- (E) should advise its members that the use of pre prepared written statements is not good practise and encourage them not to use such statements in future,
- (F) make its Members aware that a decision to refuse planning permission made on unreasonable grounds could leave the council open to an award of costs against it,
- (G) ensure that the Chairman of the Planning Panel is involved in the process to ensure that a Planning Panel's reasons for refusal of planning permission are correctly recorded, and
- (H) ensure that training sessions on the role of Councillors in Planning take place every year and be for all members of the Council.

1. BACKGROUND

This Committee at its last meeting on 11 June 2007 agreed to a task and finish group being established to look at how appeals against planning decisions are dealt with by the council.

The membership of the task and finish group was made of Councillors D Moore, R Salkeld, J Bowman, P Whalley and P Connolly.

The Sub Group met on 18 July 2007 and 1 August and heard evidence from:

Tony Pomfret, Development Services Manager
Martin Jepson, Head of Legal and Democratic Services
Councillor Mike McVeigh, Chairman of the Planning Panel

The Sub Group also observed the Planning Panel meeting on 25 July and attended a site visit for a planning permission at Cross House Farm, Millom.

2. EVIDENCE CONSIDERED

Planning Advice

The Task and Finish Group considered evidence from Tony Pomfret, Head of Development Services on the Planning Procedures and Planning Advice given to the Planning Panel when determining applications for planning permission.

The Task and Finish considered the Council's procedures for dealing with planning applications. It was noted that Government advice for the amount of decisions that should be considered as delegated decisions was 90% and that the Council currently decided 70% of its planning decisions by delegated authority.

The Task and Finish Group considered Development Control Performance figures for 2004-2007. It was noted that due to a decrease in staffing levels in 2005/06 the percentage of applications dealt with within the recommended timescales were below Government Targets. These staffing levels had been addressed although there was, at present, 1 full time planning officer vacancy.

The Task and Finish Group was informed that the determining of applications were made more difficult because as yet the final version of the Copeland Local Plan, which had been adopted in June 2006 had not yet been published.

The Task and Finish Group were informed of Procedures for objectors and applicants being heard at planning panel meetings which included written applications to speak being received not later than six working days prior to the meeting. As the procedure for elected Members to speak at meetings was regulated by Standing Orders it was not subject to advanced notice.

The Task and Finish Group considered the number of Planning Appeals for 2004-2007. It was noted that of 47 applications refused planning permission in 2006/07 only 8 had been appealed against. 6 were dealt with on the basis of written representation, which would incur no cost to the Council, two by way of a hearing, both dismissed. Members were informed that only appeals dealt with by way of public enquiry or public hearing could incur an award of costs for the authority.

The Task and Finish Group noted that the 8 appeals in 2006/07 against the refusal of planning permission was the lowest in Cumbria. However with 37.50% of those appeals being allowed it was fourth in Cumbria and slightly above the national average of 33%. It was also significantly above the Council's target of 24% which was measured by the National Performance Indicator BV 204.

The Task and Finish Group also noted that in the 34 appeal decisions over the past 3 years together with the 4 decisions issued in the first quarter of this year the decision to refuse planning permission was consistent with the officer recommendation.

The Task and Finish Group were informed that the majority of decisions go with the Officer's recommendation but that in the case of public enquiries or hearings against Officer recommendation Officers would not be able to represent the Authority. In these cases consultants and technical experts would be needed which could be costly.

The Task and Finish Group was informed of training measures in place for Planning Panel Members. It was noted that specialists were brought in on occasions when it was felt that specific issues needed to be addressed such as applications for telecommunication masts, the Sub Group agreed that this option may be needed to address Wind Farm issues.

It was noted that each year Planning Panel members attended the Town and Country Planning Summer School. Furthermore the Planning Panel and Executive Members had received training on the role of Councillors in planning from Trevor Roberts Associates in November 2006.

Legal Advice

The Task and Finish Group considered evidence from Martin Jepson, Head of Legal and Democratic Services on what legal advice is given to the planning panel to aid its decision making.

The Task and Finish Group noted that in the last six and a half years there had not been an award of costs against the Council for its determination of a planning application. Furthermore neither had the Ombudsman commented on the Council's planning process.

The Task and Finish Group further noted that in considering award of costs against a council the planning inspectorate considered grounds that were spelt out in the Government Circular 8/93. These would determine where the Council had taken unreasonable behaviour in determining a planning application.

The Task and Finish Group were informed that the Planning Panel had not been explicitly told what constituted unreasonable behaviour and it was left for officers to advise the Panel on individual cases.

The Task and Finish Group were further informed that following a decision to refuse planning permission for a planning application, officers would meet to ensure that the reasons for refusal had been properly recorded and understood.

The Task and Finish Group noted that the Head of Legal and Democratic Services intended to report to the next meeting of the Planning Panel on a review of the Planning Code of Conduct. One the current procedures only allowed objectors to make one verbal representation to the Planning Panel and they sometimes felt aggrieved that they were not able to make further representations when the matter was reconsidered at the next meeting when the Panel would make its final decision whether or not to refuse planning permission.

The Task and Finish Group further noted that the Government were consulting on proposals within its "Improving the Appeal Process in the Planning System" paper that proposed some fundamental changes to how the appeals system operated. Comments on this paper were due to the Government by 17 August 2007.

Chairman of the Planning Panel

The Task and Finish Group considered evidence from Councillor Mike McVeigh, Chairman of the Planning Panel on how the Planning Panel made its decisions.

The Task and Finish Group were informed that there had been recent examples where experienced members of the Planning Panel had spoken to the Panel from pre prepared written statement.

The Task and Finish Group noted the training that had been given to the Planning Panel members and the need to regularly refresh this training particularly when there were new members of the Panel.

The Task and Finish Group further noted that the advice given by officers on the possibility of the award of costs following a refusal of planning permission was sparingly used. However Allerdale Council had had an award of costs against them where members had overturned the officers' recommendation.

The Task and Finish Group supported the assertion that meetings of the Planning Panel should continue to be held on a non party political basis.

3. RECOMMENDATIONS

The Task and Finish Group, after considering all the evidence, agreed that there were a number of recommendations it would wish to make. These were:

The Task and Finish Group noted that the number of planning decisions that were taken under delegated authority was somewhat lower than the Government's targets. It agreed that this was an area the Planning Panel should consider as to whether the Council should make more of its decisions through delegated authority.

- (A) The Planning Panel considers whether it should increase the amount of planning decisions that are made by delegated authority.**

The Task and Finish Group were informed that due to lack of resources the final version of the Copeland Local Plan 2001 -2016 had yet to be published.

The Task and Finish Group felt that as this was the primary document for determining planning applications in Copeland the inability to publish this document made the planning system more unclear than it should be.

- (B) Greater priority and resources is given to the publication of the final version of the Copeland Local Plan 2001 - 2016 to ensure that this is achieved in the near future.**

The Task and Finish Group noted that the procedures that allowed members of the public to speak at Planning Panel meetings were different to those for members of the Council.

The Task and Finish Group felt that this created an imbalance in the system and the same procedure should apply for both members of the public and members of the council.

- (C) Review the procedures for elected members to speak at Planning Panel meetings with the aim of ensuring that members' rights to speak at Planning Panel are the same as those for members of the public.**

The Task and Finish Group noted that members of the public were only allowed to speak once during the consideration of a planning application. In circumstances where an application has been refused the member of the public will have used up their right at that meeting. However at the next meeting, following the "cooling off" period, when a further report is submitted circumstances may have changed enough for that member of the public to usefully comment upon them.

The Task and Finish Group felt that this could prejudice the member of the public and agreed that the Planning Panel should amend its procedures to allow the possibility of a member of the public to speak at more than one meeting on a planning application if the need existed.

- (D) The Planning Panel amend its procedures to allow the possibility of a member of the public to speak at more than one meeting on a planning application if the need exists.**

The Task and Finish Group were informed of recent examples where members of the Planning Panel had spoken to the Panel from pre prepared written statements.

The Task and Finish Group felt whilst it was often helpful to have prepared what you were going to say before a meeting there was a danger that having a written statement pre prepared could be seen as that member fettering their discretion. The Council's Planning Code of Conduct made it clear that Planning Panel members should take care not to commit themselves to vote for or against a proposal before a decision had been taken.

- (E) That members of the Planning Panel be advised that the use of pre prepared written statements is not good practise and be encouraged not to use them in future,**

The Task and Finish Group considered that in circumstances where the Planning Panel were making a final decision to refuse a planning application clear guidance from officers was needed on the consequences of that decision.

The Planning Panel should be made aware that the Council could be seen to be acting in an unreasonable behaviour if the grounds for refusal were not suitable planning reasons. Furthermore if the decision was held to be unreasonable then the council could have an award of costs made against it.

- (F) Members of the Planning Panel should be made aware that a decision to refuse planning permission made on unreasonable grounds could leave the council open to an award of costs against it.**

The Task and Finish Group were informed that following a decision to refuse planning permission for a planning application, officers would meet to ensure that the reasons for refusal had been properly recorded and understood.

The Task and Finish Group felt that it would be useful to involve the Chairman of the Planning Panel as this would improve this process.

- (G) The Chairman of the Planning Panel be involved in the process to ensure that a planning Panel's reasons for refusal of planning permission are correctly recorded.**

The Task and Finish Group noted the training that was currently provided for members and non members of the Planning Panel.

The Task and Finish Group felt that training of members was crucial in making sure that the Planning Panel was kept up to date on current issues. It also felt that it was important that key messages on what factors should be considered in determining planning applications should be regularly repeated to all members of the council.

- (H) That training sessions on the role of Councillors in Planning should take place every year and be for all members of the Council.**

4. CORPORATE PLAN

There is one applicable action in the Corporate Plan. This is:

Action	Outcomes (measurable)	Target date
Provide top quartile service in development Control and Building Control	Effective development, investment and regeneration, with increased availability of the built environment.	2010

5. BENCHMARKING

The performance of the other Councils in Cumbria in dealing with Planning Appeals during the period 1 April 2006 to 31 March 2007 is detailed in the table below.

Authority	Allowed	Split	% Allowed	Dismissed	% Dismissed	Total
Allerdale	4	0	18.18	18	81.82	22
Barrow	4	0	40.00	6	60.00	10
Carlisle	4	2	35.29	11	64.71	17
Copeland	3	0	37.50	5	62.50	8
Eden	11	0	47.83%	12	52.17%	23
South Lakeland	5	0	20.83%	19	79.17%	24

The Council has set a target of 24% against the National Performance Indicator BV 204. This indicator measures the number of planning appeals allowed against the authority's decision to refuse on planning applications as a percentage of the total number of planning appeals against refusals of planning applications. With a performance of 37.5% the Council is currently failing this target.

6. CONCLUSION

The Committee is invited to consider the recommendations of the Planning Appeals Task and Finish Group at the head of this report.

List of Appendices

None

List of Background Documents:

None