

# Overview and Scrutiny Committee

09 April 2018

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

## Report of the Planning Application Process Task and Finish Group

<b>Final Decision-Maker</b>	Overview and Scrutiny Committee
<b>Portfolio Holder(s)</b>	Councillor Alan McDermott, Portfolio Holder for Planning and Transportation
<b>Lead Director</b>	Lee Colyer, Director of Finance, Policy and Development (Section 151 Officer)
<b>Head of Service</b>	Karen Fossett, Head of Planning
<b>Lead Officer/Report Author</b>	Nick Peeters, Scrutiny and Performance Officer
<b>Classification</b>	Non-exempt
<b>Wards affected</b>	All wards

### **This report makes the following recommendations to the final decision-maker:**

1. That the Planning Service extend any formal training provided to Planning Committee members to all members of the Council;
2. That the Council's Business Delivery Unit support the Planning service in investigating opportunities within the application process to notify residents subscribed to the online planning notification system of new applications and changes to existing applications by SMS; and
3. That each application includes an explanation of the statutory time frame for determination and contact details should interested parties need further information.

### **This report relates to the following Five Year Plan Key Objectives:**

A prosperous borough – the Council expects to improve local infrastructure and the building of new homes and schools will provide for a strong and resilient borough for the future. The provision of housing is also a key issue for the borough. As part of this, the planning application process should be understandable and transparent for residents and elected members, to ensure communities are properly consulted as part of the decision making process.

<b>Timetable</b>	
<b><i>Meeting</i></b>	<b><i>Date</i></b>
Overview and Scrutiny Committee	9 April 2018

# Report of the Planning Application Process Task and Finish Group

## 1. INTRODUCTION AND BACKGROUND

1.1 At its meeting on the 13 February 2017, the Overview and Scrutiny Committee considered a report which highlighted a number of views expressed regarding the Council's planning application process. The report was initiated following comments received from the Tunbridge Wells Civic Society whose views were included in the report. Members of the Overview and Scrutiny Committee were also asked for their views and at the meeting and following discussion the Committee asked that a Task and Finish Group be established to look further into the process. The views of the Civic Society and the comments received from Members of the Committee are included in this report at 4.1.

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## 2. INFORMATION GATHERING

- 2.1 The Task and Finish Group met on six occasions and all six meetings were attended by the Head of Planning, Karen Fossett and/or the Building Control and Development Manager/Planning Policy Manager, Stephen Baughen. The first two meetings were for information gathering during which the Group discussed pre-application advice, planning application fees, the determining of applications by planning officers and consultation with stakeholders and the public. The Group noted, in particular, the level of work involved for Members who sit on the Planning Committee. There is a large amount of casework as well as attending short-bite briefings, site visits and Planning Committee meetings.
- 2.2 The Group was reminded that planning applications have a statutory timeframe within which they should be determined; 8 weeks for minor and other applications and 13 weeks for major applications. There were a small percentage of cases where determination of applications was extended beyond these timeframes but the decision was made following consultation with the applicant. (Sometimes an extension would be agreed in order to negotiate improvements to the quality of a proposal, which ultimately can lead to improving the chances of a successful outcome; this is consistent with the pro-development stance of government policy.)
- 2.3 The Group met representatives over two meetings from Rusthall, Pembury, Hawkhurst, Brenchley and Matfield, and Goudhurst Parish Councils. At two further meetings the Group also met representatives from the Tunbridge Wells

Civic Society and a borough councillor from an unparished ward in Tunbridge Wells.

### 3. EVIDENCE FROM STAKEHOLDERS

3.1 The Group discussed the issues raised at 13 February 2017 meeting and asked the representatives for their views. Representatives from Hawkhurst and Pembury Parish Councils were interviewed together:

3.1.1 Town parish councils' experiences of the Borough Council's planning application process varied depending of the volume of applications being dealt with by each council. Hawkhurst, for example, has previously been identified as an area for development within the site allocations Local Plan (adopted by Full Council in July 2016). As can be seen in the table below at 1.1 there were, by comparison, a significant number of applications in Hawkhurst between 1 January and 31 December 2017. Hawkhurst has a neighbourhood plan which it uses to guide its comments on planning applications and which it would expect developers to consider when submitting applications. At the time of the interview, the Plan had been reviewed by the Planning Inspectorate but had not yet been put to a referendum. The referendum took place on 8 February 2018, with a 91 percent vote in favour the plan being used by the borough Council when determining applications.

(By way of comparison, about 50-60 applications were determined per annum for each of the eight unparished wards.)

1.1

<b>Parish Councils</b>	<b>Number of applications 01/01/17 – 31/12/17</b>
Benenden	117
Bidborough	42
Brenchley	142
Capel	71
Cranbrook & Sissinghurst	217
Frittenden	35
Goudhurst	147
Hawkhurst	205
Horsmonden	104
Lamberhurst	67
Pembury	121
Rusthall	80
Sandhurst	61
Speldhurst	217
<b>Town Councils</b>	
Paddock Wood	100
Southborough	234

\* The figures in the table are from the [tunbridgewells.gov.uk](http://tunbridgewells.gov.uk) planning search page.

- 3.1.2 Concern was expressed by the Hawkhurst representative that the Parish's consultation responses received inconsistent feedback from the Council's Planning Service and there appeared to be a lack of respect for the views being expressed in light of their Neighbourhood Plan. It should be noted that as neighbourhood plans progress, they are given the relevant weight according to the point they are at in the process. The plans are also considered against other regional and national planning policies and strategies such as the NPPF.

Planning, in response, noted that their management-team review of case officers' reports would normally minimise the occurrence of inconsistencies. They also pointed out that some of the perceived inconsistencies could be associated with evolving policies, in the context of the current inability to demonstrate a 5-year supply of housing in the Borough (with the consequence that national policy sets out that local housing provision policies are "out of date" and superseded by national policy).

- 3.1.3 The representative from Pembury Parish Council said that fewer applications were received than, for example, Hawkhurst. As a result the parish planning committee would not be as familiar with the planning application process. The Pembury representative did comment that the Parish felt the recent changes to the Council's planning call-in procedure had not been communicated effectively. Pembury Parish Council was also due to pilot paperless planning which would involve the Parish Council's planning committee receiving electronic versions of planning applications and associated documents, and providing responses electronically.

- 3.2 At a further meeting, representatives from Brenchley and Matfield, Rusthall and Gouldhurst Parish Councils were asked for their views:

- 3.2.1 The representatives were, in general, satisfied with planning application process and there was a good relationship between local councils and borough planning officers. The areas that raised concern were around paperless planning and accessing planning application decisions.

- 3.3 Representatives from the Tunbridge Wells Civic Society also attended a meeting to discuss the issues they raised when the topic was originally suggested for inclusion in the Overview and Scrutiny Committee work programme:

- 3.3.1 The Civic Society representatives felt that (a) the quality of applications and the level of detail were not of a sufficient standard upon which to comment objectively. The representatives were also concerned at (b) the number of delegated decisions taken. The representatives also felt that (c) the necessary level of expertise at a case officer level was not being utilised. This was considered to be evident when applications involving heritage issues were considered. The Civic Society was also concerned that (d) the ability for the Planning Committee to refuse applications was reduced when Section 106 negotiations were included. The Society did not feel there was any political input into this part of the application process.

Planning, in response to (a) noted that while the information provided in applications may not satisfy the concerns of the Civic Society, Planning ensured that it met national requirements, which were deemed adequate for the purposes of deciding on a case. In response to (b) the Task & Finish Group noted that Planning had to make judicious use of the Planning Committee's time and the Planning services' resources which were, in effect, constrained by the capped charging structures imposed by government through nationally set fees. As to (c) please refer forward to the second bullet under para 4.1.2, and as to (d) please refer forward to para 4.3.3.

3.4 The groups final meeting was with a Councillor from a ward in the town who was also a member of the Planning Committee:

3.4.1 The planning application process for Members in the unparished areas of the borough (town wards) is slightly different in that comments from residents are received directly, rather than through a parish council or parish planning committee. The types of application that those Members will be looking at are also different, in that there will be less developments over 11 dwellings, which is the threshold for considering Section 106 contributions or affordable housing. Like town and parish councils and Members in the parished wards, the 'unparished' Members do consult with planning officers on applications and planning officers encourage developers in the town to speak to ward Members.

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## 4. CONCLUSIONS

4.1 The Task and Finish Group concluded that, in broad terms, the planning application process at Tunbridge Wells Borough Council worked well and overall, the town and parish councils interviewed were satisfied with it. There were some themes that arose from the interviews that took place and these can be seen at 4.2 below. Responses to the views expressed at the February 2017 meeting can be summarised as follows:

4.1.1 the levels of transparency involved in pre-planning discussions, particularly with major applications from developers;

- There are commercial sensitivities around pre-application advice. However, developers are encouraged by the Council's planning officers to consult with local councils and communities who may be affected. The government's National Planning Policy Framework (NPPF) state 'Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community'.
- Some concern was raised by Members of the Task & Finish Group about the use of notes - see para 4.3.1.

- 4.1.2 whether the right of the Planning Committee to make decisions on major applications has been affected by pre-application discussions and the level of work involved prior to the application being considered by the Committee;
- The government has stated that there is a presumption in favour of sustainable development and planners in local authorities are tasked to work with applicants in trying to help prospective applicants to succeed in producing high quality development. The NPPF states that decision takers at all levels should look at approving applications for sustainable development where possible. The Council's Constitution, supported by the Members' Code of Conduct, sets out the requirements and provides guidance for all Members, including those serving on the Planning Committee. The Code states that 'Members serving on the Planning Committee must approach Committee meetings with an open mind and must not decide how to vote until they have heard the presentation, any public speaking, and the evidence and arguments on either side.'
  - As part of the Planning service's work towards providing applications of good quality, applications are given to case officers with the relevant skills and experience. The Planning service has a Tree Officer, an Urban Design Officer, a Principal Conservation Officer and Conservation and Urban Design officer, and a Landscape and Biodiversity Officer. The expertise of these officers is utilised to achieve quality applications.
- 4.1.3 the ability for Members to call-in planning applications, other than for planning policy reasons – for example, if there are recognised levels of community concern;
- Part 3. 11.1 of the Council's Constitution (recently amended) explains that planning applications can be called in because of significant local concern but that the request must include the evidence and reason for the local concern.
- 4.1.4 the involvement by Members at the early stages of a planning application such as pre-planning discussions and providing opportunities for community consultation.
- As referred to in 4.1.1 above, developers are encouraged to consult ward members, local councils, community groups and residents as early in the planning application process as possible and throughout the duration of an application. The commercial sensitivities at the pre-application stage are, however, a consideration.
- 4.1.5 the levels of consultation with ward Members prior to a planning application being determined by the Planning Committee;
- Members are provided with a weekly list of planning applications and it is incumbent on Members to contact the Planning Service if there are

issues with particular applications or if the Members require further information. Members have an opportunity to filter the views of their residents through this process.

4.1.6 the impact of changes to the planning application notification process (previously adjoining neighbours were notified by letter – residents are now able to register their address on the Council’s website and will receive email notification when planning applications are made in their area).

- The decision to move the planning application process online is part of the Council’s drive towards providing a modern digital service and, along with paperless planning, will provide necessary savings. The service has now been running for 12 months and while there were some initial concerns it has now bedded in and very few complaints have been received. Residents and Members are able to contact the Council should they need support in accessing the service.
- Some members of the Task & Finish Group were concerned about the adequacy of the information provided to the registered users about the nature of the changes to applications (it appeared that there had been a recent deterioration). They suggested that Planning review both the adequacy of the information as well as the types of event that caused notifications to be issued.

4.2 There were number of themes that came out of the Task and Finish Group’s meetings and in some cases they link into each other in terms of the issue and potential resolutions:

4.2.1 **Neighbourhood Plans** – Hawkhurst’s Neighbourhood Plan has been accepted following a referendum and all planning officers at the Council have been advised that the Plan should be given due weight. A number of other parish councils including Gouldhurst, Cranbrook and Sissinghurst are in the process of putting together their own plans. Planning will continue to fully support the work being done and provide guidance. The weight given to the plans in planning terms will increase as they develop.

4.2.2 **Training** – Planning officers visit each of the borough’s 16 town and parish councils on a monthly basis to provide training. This training was initiated in 2012 but did not then take place for two or three years. The training was reinstated in 2016 and is part of the Planning services efforts to engage with local councils. There was an issue identified with the change in personnel on local councils and the potential loss of planning knowledge. It is hoped this particular issue would be resolved through improved communication between the councils and the Planning service.

Planning Committee members receive mandatory training and short-bite briefings are held prior to the Planning meetings. The Group recommended that all Members be invited to any formal planning training provided to the Planning Committee members. The Group also recommended that as part of this, the short-bite training be extended to all Members once every six months, yet recognised that attendance would be less likely due to their ‘short’ nature and travel distance.

4.2.3 **Communication** – During discussion with the town and parish council representatives, it became apparent that there was a perceived disconnect between the Borough council, and some town and parish councils, particularly in terms of how the borough council responds to consultation responses and how the response is accessed by local councils. All planning application decisions, including delegated decisions, will have a report which includes a response to the comments received by both statutory and non-statutory consultees. The response does not address each specific point raised and addresses only those issues that are material planning considerations. The main issue identified through discussion was the ability of local councils to access the reports and final decisions. This will, in part, improve as more local councils move towards a paperless planning system. It was recognised that some of the issues around communication were historic and both the borough council and local councils are keen to improve and maintain good working relations.

4.2.4 **Paperless Planning** – Approximately 80 percent of applications are submitted online through the Planning Portal, and the Council's Planning service is working with local councils to roll out paperless planning. A pilot scheme is underway and participating councils receive email notifications of applications and access the information and documents through the Planning Portal. Also, documents received by the borough council are scanned in by the technical team, including consultation responses, and put online, along with the completed application. Concern was expressed by some of the representatives that this would be a difficult piece of technology to deliver within current resources and the main technical difficulty highlighted was the ability to compare original applications with current ones. The Group recognised that some Parish Councils may need to improve their IT facilities, such as provision of multiple large displays, of printers able to render A3-sized documents.

The Planning service will support the councils where possible and it was suggested by the group that a network of local councils/councillors be set up to look at this issue specifically. The Group noted that the only local authorities in Kent which still provide paper copies of planning applications to Parish/Town councils are Maidstone, Tunbridge Wells and Swale. There were some initial technical issues with the introduction of online notification of planning applications

4.2.5 **'Unparished members'** – part of the Group's remit was to look at how borough members in the town 'unparished' wards engage with Planning and the planning process. (Note that unparished wards experience about half the volume of applications that Parish Councils have to deal with – refer back to 3.1.1.) The Group met with a borough councillor who represented a town ward in Tunbridge Wells. It was evident that the environment for unparished Members in terms of planning was different and there were a different set of issues. For example, experience of Section 106 agreements was reduced (in the Parished areas) because there was less likelihood of major development ward to ward.

- 4.3 There were some additional points noted by the Task and Finish Group that, whilst not included in the recommendations, it was felt should be included in the final report:

Whilst planning officers refer back to the detail covered during pre-application discussions, the notes from those discussions are not included on the planning website. Some members of the Task & Finish Group were concerned by the very fact that a case officer, when assessing an application, can access pre-planning notes, if they existed for that case (see 4.1.1 above). Use of such pre-planning information could be considered as influencing/biasing that officer's assessment. The application and its supporting information, extant policies, and consultees' and others' comments, are meant to be the **only** foundation for the officer's assessment. Officers' commented that the review was undertaken for completeness: i.e. so Officers are aware of an applicant's original thoughts, and how these have/have not evolved, and the advice provided previously by TWBC. There will be times where the decision on an application will be different to the advice offered at pre-application stage, including the result of consultee responses.

- 4.3.1 There is an onus on all Members to be aware of planning applications in the system that are in their wards. If there are issues that the Member is aware of directly, or that has been brought to their attention by residents, early engagement with Planning is preferable.
- 4.3.2 Section 106 agreements were not part of the Group's remit but concern was expressed by some of those interviewed that the securing of agreements was a biasing factor when determining applications. In February 2016, the Overview and Scrutiny committee considered a number of recommendations by a task and finish group which had looked at both Section 106 agreements and the Community Infrastructure Levy. The recommendations sought to improve the communication of Section 106 agreements between Planning and Members. The Planning service will be looking at what opportunities are available within the new Local Plan to strengthen the policies around the agreements. Part of this work will also look at how other authorities are managing the process and dealing with the viability test.
- 4.3.3 One of the responses received by an 'unparished' Member who was unable to attend the Group's meeting, was for a better understanding of what the Council could do through the planning process, to ensure affordable housing is delivered within developments. Again, while not within the Groups remit it was felt that the issue should be noted. The Group was advised that national legislation and the NPPF would need to be changed as this was the level at which the viability test was set.

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## 5. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 5.1 The Task and Finish Group asks that the Overview and Scrutiny Committee consider the findings in the report and endorse the recommendations.

5.2 The Group has worked closely with planning officers and key stakeholders to look at the issues raised and provide realistic recommendations.

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## 6 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 The decision of the Committee will be recorded in the minutes of the meeting. The minutes will be published and made available on the Council's website and if required, the decision will be reflected in the Committee's future work programme.

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## 7 CROSS-CUTTING ISSUES AND IMPLICATIONS

<b>Issue</b>	<b>Implications</b>	<b>Sign-off (name of officer and date)</b>
<b>Legal</b> including Human Rights Act	There are no direct legal or human rights implications resulting from the recommendation in the report.	Patricia Narebor, Head of Mid Kent Legal Partnership
<b>Finance</b> and other resources	There are minor, or negligible financial implications resulting from the recommendations in the report.	Jane Fineman, Head of Finance and Procurement
<b>Staffing establishment</b>	There is no direct impact on staffing levels as a result of the recommendation in the report.	Nicky Carter, Head of HR Executives Heads of Service
<b>Equalities</b>	The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users.	Sarah Lavallie, Corporate Governance Officer
<b>Risk management</b>	There are no risk issues that are raised within the report.	Nick Peeters, Scrutiny and Performance Officer
<b>Data Protection</b>	There are no data protection issues raised in the report	Jane Clark, Head of Policy and Governance
<b>Environment</b>	There are no environment and sustainability issues identified in the report.	Karin Grey, Sustainability Manager
<b>Community Safety</b>	There are no community safety issues identified in the report.	Terry Hughes, Community Safety Manager

**8 REPORT APPENDICES:** none

**9 BACKGROUND PAPERS:** none