

Report

Planning Committee

Part 1

Date: 6 January 2016

Item No: 6

Subject **Development Management Performance Report April 2015-October 2015**

Purpose To inform Members of the performance of the Development Management Team over the last 6 months.

Author East Area Manager

Ward All

Summary The following report summarises the performance of the Development Management Team over the first half of the 2015-16 financial year including time taken against targets for application determination, enforcement complaints resolved and appeal decisions. It also provides a summary of reasons why planning applications take in excess of the target 8 weeks for determination.

Proposal **To note the current performance of the Development Management Section.**

Action by Planning Committee

Timetable Not applicable

Consultation Not applicable

1. Background

- 1.1 The following report summarises the performance of the Development Services Section between April 2015 and October 2015.
- 1.2 Decisions made are expected to benefit the City and its communities by allowing good quality development in the right locations and resisting inappropriate or poor quality development in the wrong locations. However applications must also be determined within specified timescales or the Council risks losing the right to determine a particular application. The Welsh Government and the Council monitor the percentage of applications in various categories which are determined within specified timescales as well as the percentage of applications overall which are approved.
- 1.3 The Development Management team has been subject to an efficiency review and the recommendations of this review have been implemented. Development Management services are now delivered through two multi disciplined teams with a combined total of 15.3 staff dealing with planning applications; appeals and enforcement.

2. Financial Summary:

- 2.1 No financial implications.

3. Risks:

- 3.1 The key risk relating to the processing of applications relates to exceeding the timescales for determination. On the 1st October 2015 the Welsh Government introduced regulations which require application fees to be refunded if no decision is issued, or no extension of time agreed, within 16 weeks of the start date for a householder application and 24 weeks for all other applications. In respect of applications for prior approval, typically for demolition, telecommunications and agricultural proposals, if a decision is not made within the specified timescales, permission is granted in default and the Council is unable to control the development.
- 3.2 With other types of application, delays in determining the application could result in the applicant lodging an appeal against non-determination with the Welsh Government and again, the decision making power of the Council is forfeited. In connection with such appeals, counsel may be required and costs can be awarded against the Council in certain circumstances. Whilst appeals against non-determination are rare (due to the further delay associated with the appeals process), it remains a right which is available to the applicant.
- 3.3 Mitigation measures to reduce risk are detailed in the table below. The probability of these risks occurring is considered to be low due to the mitigation measures, however the costs associated with a public inquiry can be very significant. These are infrequent, so the impact is considered to be medium.

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Application fee refunded	H	L	Monitoring of expiry dates is undertaken on a weekly basis and relevant applications prioritised and extended/determined before they expire.	Development Services Manager
Decisions not	H	L	Ensure application is	Development

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
made within prescribed time period for applications for prior approval.			determined and decision notice sent before expiry of statutory period	Services Manager
Appeal lodged against non-determination, with costs awarded against the Council	M	L	Avoid delaying the determination of applications unreasonably.	Development Services Manager

* Taking account of proposed mitigation measures

4. Links to Council Policies and Priorities

- 4.1 The Council's Corporate Plan 2012-2017 identifies five corporate aims: being a Caring City; a fairer City; A Learning and Working City; A Greener and Healthier City; and a Safer City. Key priority outcomes include ensuring people live in sustainable communities; enabling people to lead independent lives; ensuring decisions are fair; improving the life-chances of children and young people; creating a strong and confident local economy; improving the attractiveness of the City; promoting environmental sustainability; ensuring people live in safe and inclusive communities; and making Newport a vibrant and welcoming place to visit and enjoy.
- 4.2 Through development management decisions, good quality development is encouraged and the wrong development in the wrong places is resisted. Planning decisions can therefore contribute directly and indirectly to these priority outcomes by helping to deliver sustainable communities and affordable housing; allowing adaptations to allow people to remain in their homes; improving energy efficiency standards; securing appropriate Planning Contributions to offset the demands of new development to enable the expansion and improvement of our schools and leisure facilities; enabling economic recovery, tourism and job creation; tackling dangerous structures and unsightly land and buildings; bringing empty properties back into use; and ensuring high quality 'place-making'.
- 4.3 Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 all planning applications must be determined in accordance with the Newport Local Development Plan 2011-2026 (adopted January 2015) unless material considerations indicate otherwise. Planning decisions are therefore based primarily on this core Council policy.

5. Options available

- 5.1 Not applicable.

6. Comments of Chief Financial Officer

- 6.1 There are no financial consequences arising from this report.

7. Comments of Monitoring Officer

- 7.1 There are no specific legal issues arising from the Report. The determination of planning applications within statutory time scales will become more critical following the introduction of fee rebates as any delays will then have significant financial consequences for the Council as well as the risk of a non-determination appeal. Therefore, it is pleasing to note that performance targets continue to be met.

8. Comments of Head of People and Business Change

- 8.1 There are no direct HR implications arising from this report
- 8.2 It is pleasing to note that the service is on track for meeting the service plan target for 15/16 for applications determined within 8 weeks. Consistent approval rates in this area promote a positive image of the city and indicates confidence in the regeneration of the built environment.

9. Local issues

- 9.1 Not applicable. This performance update affects the whole city.

10. Consultation

- 10.1 Not applicable.

11. Background Papers

- 11.1 Not applicable.

Dated: 6 January 2016

1 Planning Applications

- 1.1 Performance is monitored on a monthly and quarterly basis with targets set each year. The Service Plan target is to determine 73% of planning applications within 8 weeks of registration.
- 1.2 Between the 1 April 2015 and 30 September 2015, 605 applications were determined by the Applications Team, 76% of which were determined within 8 weeks of registration. This compares to 536 applications in the preceding 6 months with 66% determined within 8 weeks. This represents a 10% improvement on performance and comfortably meets and exceeds our Service Plan target.
- 1.3 Of the 605 applications determined, 93% of all applications were approved, compared to 88% in the preceding 6 months. This increase in approval rates is testament to Officers continually seeking to negotiate improvements to proposed schemes when appropriate.
- 1.4 **Context**
- 1.4.1 Officers are managing to maintain good performance, despite a number of vacant posts and staffing changes over the last year. These include the Development Services Manager post since May 2015. As the Authority's Chief Planning Officer this is an important post within the Service and unsuccessful attempts to appoint a replacement has impacted the workload of the Area Managers. Other vacant posts during the review period have included a Senior Planning Officer post for over two months, a Planning Officer post for over 3 months and an Enforcement Officer post which has been vacant for over seven months. The remaining officers took on extra work to cover the vacant posts and the recruitment process itself has taken considerable management time. However as from December 2015, the Section is fully staffed with the exception of the Development Services Manager.
- 1.5 **Major Applications**
- 1.5.1 This category relates primarily to applications for 10 or more dwellings, or the creation of over 1000 square metres of floorspace, or where the application site area exceeds one hectare.
- 1.5.2 In respect of major applications 21 applications were received in the review period. Major proposals have a determination target of 8 weeks and the Team determined 19% within 8 weeks. Compared to less than 1% in the preceding 6 months this represents a significant improvement. Prior to April 2013 the Welsh Government measured performance for major applications against a 13 week deadline, and it is on that basis that the Business Plan target of 35% was set. Major applications inevitably involve a high level of complexity and most large scale proposals are determined by Planning Committee. Delays are often unavoidable due to the complex nature of the proposal, the number of consultees involved, the frequency of Committee meetings and the high proportion of legal agreements that arise from such proposals. Therefore to achieve 19% is positive and just below the Wales average of 24%. In comparison to other Welsh local Authorities, in the financial year 2014-2015 Cardiff dealt with 8% of all major applications within time (37 in total), Swansea 6% (32 in total) and Newport 20% (35 in total). The Wales average for 2014-2015 was 27 major applications per Authority. These statistics therefore show that Newport is performing well in this category.
- 1.5.3 The Welsh Government has recognised that an 8 week target for major applications is challenging, particularly as many of these cases require Section 106 Agreements. In response to this and from January 2015 a decision is deemed to have been made once the Planning Committee has made their resolution to grant subject to a Legal Agreement. This change together with the promotion of pre-application advice has helped Officers to make more timely decisions.

- 1.5.4 In terms of focussing on the key outcome of enabling and shaping the regeneration and growth of our City, it is important to note that 76% of all major applications were granted.
- 1.5.5 Of the 17 major applications that ran over the 8 weeks target, the majority of these were delayed due to the need for further information from the applicant and negotiation. Delays were also experienced as a result of the absence of a Development Services Manager and Area Managers having to absorb the responsibilities of this post and delegating extra duties to Principal Planning Officers whom would also be responsible for processing major and more complex applications. However, most applicants and agents understand and expect major applications to take slightly longer to determine and appreciate the willingness of more senior Planning Officers to negotiate and wait for survey results, etc where required and appropriate.
- 1.6 **Householder Applications**
- 1.6.1 This category encompasses all proposals relating to works to houses, principally extensions and alterations to dwellings.
- 1.6.2 In the last half year period, the Council determined 139 such applications, 88% of which were granted. 82% of all householder applications were determined within 8 weeks, which is slightly below the target of 85% stated in the Business Unit Plan.
- 1.6.3 Twenty five cases ran over time. Reasons for the delay were due to negotiation with applicants and workload issues as officers attempt to absorb work from vacant posts (see section 1.4.1 above regarding staff vacancies).
- 1.7 **Minor Applications**
- 1.7.1 This category generally comprises smaller scale residential developments (less than 10 dwellings), commercial developments and other non domestic proposals, such as the change of use of a property, or the installation of a new shopfront.
- 1.7.2 During the last six month period, 135 applications were determined. Approval rates remained high at 87%, and 70% of all minor applications were determined within 8 weeks (compared to 60% in the previous 6 month period).
- 1.7.3 The “minor” category often includes the most controversial development proposals and many of these proposals are therefore dealt with by Senior Planning Officers. Bearing in mind such applications are often complicated by issues of flood risk, ecology, highway safety, noise impact, etc that require additional reports/surveys to be undertaken and submitted for assessment, determining 70% within the target time period is considered to be a positive. The changes to the definition of the decision date relating to applications with a Section 106 Agreement have helped in improving performance in this category.
- 1.7.4 For the April 2015 to October 2015 period, the majority of cases that ran over target did so due to the need for more information to be supplied by applicants or negotiation with applicants.
- 1.7.5 Once again, focussing on the outcome of enabling the growth and regeneration of our City, the speed of decision making for minor applications is improving and the negotiation and/or requests for additional information have resulted in the vast majority of proposals being approved (87%).

1.8 Other Applications

- 1.8.1 The Development Management Section also processes other types of applications including advertisements, listed building applications, variation of conditions and discharges of condition which totalled 310 in number over the six month review period. Again approval rates were high at 94% and the percentage of applications determined within 8 weeks stood at 80%, compared to 69% during the previous 6 months.
- 1.8.2 The majority of those cases out of time were due to a need for the applicant to supply further information or required further negotiation. These cases were mainly variation of condition and discharge of condition requests that the Section chose to negotiate to resolve rather than just refuse. A failure to discharge conditions will invariably be referred to the enforcement team so case officers prefer to negotiate to achieve agreeable outcomes where possible. This is largely dependent upon the co-operation of applicants and developers.

1.9 Benchmarking with other Welsh Authorities

- 1.9.1 The Welsh Government provide statistics on the performance of all Welsh Local Planning Authorities. The most up to date information relates to Quarter 2 of 2015, namely July-September 2015. Whilst this report covers the period from April 2015 - October 2015, the following table provides some degree of comparison between Authorities in South East Wales.

Authority	Number applications received	Percentage determined in Under 8 Weeks
Blaenau Gwent	118	88
Caerphilly	381	59
Cardiff	803	82
Merthyr Tydfil	115	95
Monmouthshire	310	80
Newport	403	82
Rhondda-Cynon-Taff	338	75
Torfaen	188	85
Vale of Glamorgan	329	83
Wales average	292	77

- 1.9.2 This table shows that Newport received the second highest number of applications within the Region during the quarter. Whilst Newport's performance (82%) is slightly lower than the likes of Torfaen, Blaenau Gwent and Merthyr Tydfil, workloads are significantly higher and tend to involve larger and more complex proposals. Compared to Authorities who experience similar development pressures such as Cardiff (82%) and Swansea (83%), our performance of 82% is encouraging. Furthermore the Welsh average of applications determined within 8 weeks for the period July to October 2015, was 77% which is below the figure achieved by Newport's Development Management Team.

1.10 Conclusion

- 1.10.1 Overall, within the six month period between April and October 2015, 76% of all applications were determined within 8 weeks of registration. This met the Service Plan target of 73% for the year. This has been achieved despite the Section having periods of staff vacancies. Whilst this is testament to the hard work of Officers during periods of high pressure and increased workloads, the number of 'backlog' applications has increased and it should be pointed out that performance will drop once those applications begin to be processed. Despite this, the Section is fully staffed (with the exception of the Development Services Manager) and Officers are committed to producing the best quality decisions having regard to the existing and emerging development plan and material considerations. Officers are keen to continue liaising with applicants and interested parties to maintain approval rates in

the region of 90%. Such high approval rates are considered to promote a positive image of the Service to future developers and investors, and provides evidence that we are achieving our objective of enabling good quality development in the right locations.

2 Planning Appeals

- 2.1 A total of 11 appeals were decided between 1st April 2015 and 30th September 2015, with 10 (91%) of the Council's decisions upheld at appeal. The one appeal which was allowed was refused by Planning Committee contrary to Officer recommendation to approve. Overall performance in this area significantly exceeds the Service Plan target of 70% and the Wales average for 2014-2015 which stood at 65.6%. The number of decisions challenged has fallen slightly compared to the previous 6 months which saw 19 decisions received between October 2014 and the end of March 2015.
- 2.2 The Section has achieved a 100% success rate in respect of enforcement appeals. Five enforcement appeals were determined and costs of £297 awarded to the Council in respect of one appeal at High View House, Llandevaud.
- 2.3 From April 2015 to October 2015, no appeal costs have been awarded against the Council. This performance outcome is testament to the quality of decision being made by experienced Officers within the Team.

3 Planning Enforcement

- 3.1 Following a restructure in March 2012, the number of planning enforcement officers was reduced to 4 based within the area Development Management teams. In the review period 226 cases were received, compared to the 339 cases received between 1st October 2014 to 31st March 2015. This represents a downturn in cases but is partly linked to the vacant Enforcement Officer post which has been vacant for the entire review period, despite attempts to recruit to the post. As a result some existing Officers are carrying higher than average caseloads (up to 150 cases compared to a normal average of 70-90 live cases). This results in Officers being less proactive in identifying breaches of planning control, for example through monitoring construction sites, and are only able to provide a reactive service.
- 3.2 The enforcement process is often slow in terms of securing resolution of breaches of planning control. This is one of the areas of our work that members are most likely to come into contact with following calls from residents and one challenge for the section is to better manage expectations. A Planning Conference was held in February 2015 for Members which helped to explain the legal framework within which we must work and our procedures.
- 3.3 Whilst enforcement staff have been less able to take a proactive approach in Planning Enforcement matters, they are still continuing to monitor Building Control applications and check Environmental Health Licensing applications. In addition to the above, Enforcement Officers continue to work closely with Empty Homes, Environmental Health and the Community Safety Wardens, and are present on a number of working groups such as the Problematic Premises Group, which takes a multidisciplinary approach to tackling such properties.
- 3.4 The first step in dealing with enforcement complaints (that is, complaints of unauthorised development, development in breach of planning conditions, or development not complying with approved plans) is to investigate to see whether or not a breach of planning control has occurred. This is because the development in question may have been given planning permission, may not require planning permission, or may not even be occurring. Other activities may be occurring but are covered by other legislation and are not breaches of

planning control: such cases are referred to the appropriate department or organisation to deal with.

- 3.5 Where a breach of planning control is identified, attempts are made to resolve the problem informally. Where this is not successful, and it is expedient and in the public interest to pursue further (because the development/use is unacceptable), formal enforcement action is taken. This normally takes the form of an Enforcement Notice, Breach of Condition Notice or Unsightly Land Notice. Occasionally a breach is so severe and causing irreparable damage that a Stop Notice is required. Non-compliance with such a Notice is a criminal offence. Certain breaches of planning control are immediate criminal offences and prosecution proceedings can be taken without the need for a Notice (such as unauthorised works to Listed Buildings or trees protected by a Tree Preservation Order, or the unauthorised display of advertisements).
- 3.6 The Service Plan sets a target of resolving 85% of all enforcement cases within 12 weeks of receipt. The Welsh Government amended the performance indicator definition in April 2013 in the terms of the definition of when a complaint is 'resolved'. A complaint is resolved when one of the following occurs:
- a retrospective application to regularise the breach of planning control is approved, either by the Council or at appeal (previously, the definition was that a retrospective application was *received*);
 - an Enforcement Notice is complied with (previously, the definition was that an Enforcement Notice was *issued*);
 - the breach of planning control ceases, for example the use stops or the building is demolished;
 - the case is referred to another department or agency to resolve under its powers;
 - no breach of planning control has occurred; or
 - further action is not expedient and in the public interest.
- 3.7 Welsh Government have also introduced a new monitoring data set which records the number of Enforcement complaints investigated within 12 weeks of receipt and the complainant notified of the findings and proposed action. The Service Plan sets a target of 85% in this category. During the review period, the enforcement team were able to investigate 94% of complaints and notify the complainant of the findings within 12 weeks. This is a good outcome and demonstrates that Officers are attempting to process new complaints in a timely manner.
- 3.8 Between April 2015 and October 2015, 226 cases were received, 187 cases were resolved and of these 187 resolved cases, 75% were resolved within 12 weeks of receipt. This falls short of the 85% target but would have exceeded the 2014-2015 Business Plan target of 71%. The Service Plan target was raised in response to good performance across the team during the previous monitoring period when they were fully staffed and benefitted from the knowledge of experienced staff. During the current review period, the Team has been one member of staff down for the entire period and this has a natural knock on effect on performance. Whilst Officers are attempting to investigate new complaints in a timely manner, workload is affecting the amount of time taken to fully resolve a case. However, a recently qualified planner has been appointed and is now getting up to speed on Development Management processes and taking on a caseload of enforcement cases. Despite this, the Team is committed to swiftly and efficiently resolving breaches of planning control.

4 Outcomes

4.1 As stated above, speed of decision-making represents just one measure of the work and achievements of both officers and the Planning Committee. In addition to the numerous significant developments approved and commencing on site, the following achievements are worth noting:

- The adoption of a Local Development Order, the first in Wales, in August 2015;
- The adoption of a raft of Supplementary Planning Guidance in August 2015 which underpins the adopted Local Development Plan;
- The Council has a 9.2 year housing land supply (we must have a minimum 5 year supply);
- A total of 27no. Section 106 and other Legal Agreements were completed in 2014-2015;
- 97% of completed dwellings on large sites were on brownfield land;
- £**m worth of S106 contributions were secured and 18% of homes built were affordable;
- 13 Enforcement Notices were issued and a number of successful prosecutions brought.

East Area Manager