

REGENERATION SCRUTINY PANEL

A meeting of the Regeneration Scrutiny Panel was held on Wednesday 11 October 2023.

PRESENT: Councillors I Blades (Chair), N Hussain (Vice-Chair), J Ewan, D Jackson, J Kabuye and I Morrish

OFFICERS: P Clarke and S Lightwing

APOLOGIES FOR ABSENCE: were submitted on behalf of Councillors Hill and Hurst

23/13 WELCOME AND EVACUATION PROCEDURE

The Chair welcomed all present to the meeting and read out the Building Evacuation Procedure.

23/14 DECLARATIONS OF INTEREST

There were no declarations of interest received at this point in the meeting.

23/15 MINUTES - REGENERATION SCRUTINY PANEL - 6 SEPTEMBER 2023

The minutes of the Regeneration Scrutiny Panel meeting held on 11 October 2023 were submitted and approved as a correct record.

23/16 PLANNING CAPACITY - SCRUTINY REVIEW

The Head of Planning provided an overview of Middlesbrough Council's Planning Service as an introduction to the Panel's new scrutiny review topic.

Planning was a statutory function of the Council. The Planning Service supported economic growth and the Council's aspirations as well as fostering and helping new development. The aim was to create the right development in the right location and not every application was accepted. Planning Officers endeavoured to remove hurdles to development and ensure that appropriate infrastructure was in place. The Planning Service also ensure that Section 106 funding was utilised appropriate to mitigate the impact of new developments.

Middlesbrough Council's Planning Services were organised into two key areas: Strategic Policy (which included Planning Policy, Conservation and Strategic Housing) and Development Control (which included Building Control).

With regard to the statutory basis for Planning, there were numerous pieces of legislation which included:

Legislation

- The Town and Country Planning Act 1990.
- The Planning and Compulsory Purchase Act 2004.
- The Planning Act 2008.
- The Localism Act 2011.

Statutory Instruments

- The Town and Country Planning (Local Planning) (England) Regulations 2012.
- The Town and Country Planning (Development Management Procedure) (England) Order 2010 (and subsequent Amendments).
- The Community Infrastructure Levy Regulations 2010.

It was highlighted that neither list above was exhaustive.

The Statutory functions of the Council's Planning Service included:

- To produce a Local Plan.
- Neighbourhood Planning.

- Conservation.
- Brownfield Register.
- Self-built Register.
- Planning Applications.
- Adverts.
- High Hedges.
- Habitat Regulations.
- Enforcement of Building Regulations.
- Dangerous Structures.
- Local Land Searches.
- Freedom of Information (FOI) Requests.

Non-Statutory functions included:

- The Local List.
- Housing Strategy.
- Supplementary Planning Documents/Development briefs.
- Pre-planning Application Advice.
- Enforcement.
- Article 4 Directions.

The Local List identified buildings, structures, parks, gardens and open spaces in Middlesbrough which were of special local architectural and/or historic interest and did not have statutory protection. It was particularly important in Middlesbrough which was a relatively young town but had some significant structures that needed protection.

Supplementary Planning Documents/Development briefs helped the planning process and informed design. Examples were given of the masterplans for Nunthorpe and Stainsby. Masterplans had been used to refuse and dismiss appeals.

Whilst there was no statutory requirement to provide pre-planning application advice, the Planning Service preferred to talk to applicants before they submitted their application. In 2017, the Planning Service dealt with about 500 pre-applications and by 2021 that number had risen to 1,000. In 2022, due to capacity pressure, that service was withdrawn. It was later re-introduced but the Council now charged a fee.

Enforcement was a discretionary function but also a necessary one. The Council needed to be seen to enforce to preserve its reputation. An example was given of the Pybus Brothers Building in Linthorpe when heritage elements had been removed without permission and were later reinstated at the Council's request.

Whilst there was a procedure document for determining when enforcement action should be pursued, the timescales had not always been adhered to due to other pressures on the Planning Service. The types of action taken were prioritised with listed buildings and trees with preservation orders being high priority. Not everything was enforced against and a judgement had to be made as to whether enforcement action was in the best interests of the Council.

Article 4 directions removed permitted development rights which could include the rights for removing walls, changing windows or laying drives, if this could damage the character of the area. Article 4 provided control of the quality of the environment.

The Panel were shown an organisational chart of the current Planning Services Structure which illustrated that there were currently 9 vacancies, 5 which were in Building Control. The Council was working with Stockton Council and also using some agency staff to carry out building control activity.

Several of the vacant posts were career grades but unfortunately staff had moved to other Local Authorities that paid higher salaries.

Some new posts that were created in November 2022 had taken a long time to recruit into and a Planning Apprentice had just started in post this month. There had been no success in recruiting an Enforcement Assistant to date and therefore there was little point in trying to recruit an Apprentice to support that post.

Vacant posts were advertised on the Council's website, jobs north east, planning magazines and building control websites. The Council had also approached universities and tried to advertise there. There had been a strong field of four candidates to select from for the Planning Apprentice post.

It was highlighted that a large number of the posts on the structure were part time. When previous restructures had taken place, staff in post had been slotted in and permitted to change their hours. This had created pressures going forward since budgets had been cut back to allow those truncated hours. Officers from Planning Policy were assisting wherever possible but also had their own workloads.

The income target for Development Control was higher than the cost of running the service. There was approximately £650,000 in income from fees and the cost of delivering the service was circa £500,000. Any additional income would either go back into the service or into a corporate budget.

Fees for building control were set locally whereas the development control fees were set nationally. The fees for major applications were due to increase by 35% from 1 April 2024 and for minor applications by 25%. The fees would rise annually in line with inflation from next year. However 30% of the current fee income came from within the recently created Mayoral Development Corporation area, so that would be a loss to the Council.

The following performance measures were presented in relation to planning applications:

Speed of decision making (Oct 2021 – Sep 2023):

Majors	59%	(60%)
Non-major	75%	(70%)

Quality of decision making (Apr 2020 – Mar 2022):

Majors	0%	(10%)
Non-major	1.1%	(10%)

The national performance measures for determining applications within 13 weeks were shown in brackets. If the performance measures were not met the Council could be at risk of being put in special measures by the Government. Middlesbrough did drop slightly lower at 59%. The Planning Advisory Service had undertaken a review of the Planning Service to help identify some of the issues and avoid special measures being imposed.

The Council had won every major appeal and only lost 1.1% of non majors which was a record to be proud of.

Issues that had affected performance were listed in the presentation as follows:

- Covid/lockdown.
- IT matters.
- Pre-application queries.
- Quality of applications.
- Capacity issues.
- Planning service.
- Consultees (highways, drainage, external).
- Skills.
- Recruitment.
- Nutrient neutrality.
- Emerging/changing legislation.
- Community involvement/engagement.
- Mayoral Development Corporation.

Prior to the Covid pandemic there were no major concerns for the planning service but since then there had been a slight change in the mix of planning applications. More people were working from home and needed extra space for home offices. There had also been restrictions on site visits which had made it more difficult to deliver within timescales. The planning service had specialist equipment in the office and worked better as a team in one place rather than with staff working at home. A recent review by the Planning Advisory

Service (PAS) had recommended that the planning service team was allocated its own area in Fountains Court so that they could sit and work together. This would also assist with training new staff.

At the end of 2019 the service had started to introduce a new IT system and unfortunately it had not been introduced as effectively as envisaged. A more effective website would hopefully mean that fewer people would come to office for information.

Pre-application queries had almost doubled between 2017 and 2021 and they took up officers' time to deal with. However, it was an important task as otherwise the quality of the application might be poor and then timescales were more likely to be missed. Previously pre-applications could be turned around within 8 weeks but with the increase it was more likely to be 10 to 13 weeks.

Since fees had been introduced for the pre-application service, fewer people were using it. The planning service was taking a stronger stance on applicants that did not heed the advice given and were more likely to refuse poor applications than continuing to ask for amendments. This had also led to more complaints about the service which also had to be dealt with. The pre-application fees were on a sliding scale and if the answer to an enquiry was straightforward – either Yes or No, there would be no charge.

Enforcement cases had risen dramatically since covid as many householders had started work without seeking permission. The quality of applications had also deteriorated over the last five years.

With regard to capacity, large housing applications took up an enormous amount of Officer time, whereas householder extensions for example could be turned around quite quickly. Unfortunately, due to the lack of capacity in the service, principal officers were having to deal with the smaller applications rather than concentrate on the large ones.

There was currently only one Council Officer who provided advice on highways and drainage. This post had been through several restructures and had recently been moved to the Environment Services Directorate. Awaiting comments in relation to highways and draining and also from external consultees often slowed down applications. In addition, there was a lack of skilled personnel at the Council in areas such as design, ecology and arboriculture and therefore external advice had to be sought.

Emerging legislation had also introduced new requirements including nutrient neutrality, a performance management regime, infrastructure levy, and statutory requirements including having to have design codes across the town, all of which would take up additional officer time.

Community involvement and engagement was a critical element of planning services and there was a higher level of response to applications than previously as well as a higher level of complaints. This was a national issue as the environment became more important to people. Every comment that was submitted was read and logged and included in Committee reports. This created more work and unfortunately more anti-planning feeling when decisions went against.

The inception of the Mayoral Development Company (MDC) earlier this year had also created more work as the Council initially carried on dealing with planning applications on the MDC's behalf.

There was currently only one Enforcement Officer and 400 outstanding cases. Many of these cases were not actually planning matters but if the service did not respond then this could lead to a complaint being submitted. The Council had four years from when the potential breach was notified to deal with the issues, and ten years for a change of use. The Government had indicated that the legislation would be changed to ten years for any type of breach of regulations. Middlesbrough Council currently prioritised enforcement activities in relation to Article 4 and conservation in Linthorpe.

Whilst the service tried to minimise the impact on resources it was vital to balance this with protecting Middlesbrough's heritage. Each year the team would photograph the Linthorpe area and check for changes and whether any enforcement was required. Guidance was

provided on the Council's website in relation to the conservation areas and officers used their professional judgement to check with the required standards had been met when changes had been made. The sanction for non-compliance with planning was usually a fine. One of the key recommendations in the Levelling-Up and Regeneration Bill was that fines were increased along with the fee for retrospective applications. There was national recognition that enforcement needed to be strengthened. It was acknowledged that the Council needed to strengthen its enforcement activity and also raise public awareness.

AGREED that the information provided was received and noted.

23/17 **TERMS OF REFERENCE - PLANNING CAPACITY**

Draft Terms of Reference for the scrutiny review of Planning Capacity had been circulated with the agenda.

AGREED that the terms of reference for the Planning Capacity Scrutiny Review were approved as follows:

- A) To understand the current position in terms of Middlesbrough Council's present planning capacity, building control and enforcement provision.
- B) To examine any non-statutory functions currently provided by Middlesbrough Council's planning service.
- C) To consider measures, including joint working with other local authorities, that could be put in place to mitigate any gaps in the current service.
- D) To investigate what additional resources, if any, can be accessed from Central Government or other bodies to assist with improving planning capacity.
- E) To consider any potential implications/impact/challenges of the Regeneration and Levelling Up Bill on planning services.

23/18 **OVERVIEW AND SCRUTINY BOARD UPDATE**

The Chair provided a verbal update on the meeting of the Overview and Scrutiny Board which was held on 20 September 2023. The Regeneration Scrutiny Panel's Work Programme 2023-2024 was approved by the Board.

23/19 **DATE AND TIME OF NEXT MEETING**

The next meeting of the Regeneration Scrutiny Panel was scheduled to take place at 10 am on Wednesday 1 November 2023.

23/20 **ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR, MAY BE CONSIDERED.**

None.