

JOINT PLANS PANEL

Meeting to be held in Civic Hall, Leeds, LS1 1UR on
Tuesday, 31st January, 2017 at 1.30 pm

MEMBERSHIP

Councillors

Councillor Javaid Akhtar
Councillor Barry Anderson
Councillor Salma Arif
Councillor Jonathan Bentley
Councillor David Blackburn
Councillor Colin Campbell
Councillor Brian Cleasby
Councillor David Congreve
Councillor Mick Coulson
Councillor Catherine Dobson
Councillor Robert Finnigan
Councillor Al Garthwaite
Councillor Ronald Grahame
Councillor Caroline Gruen
Councillor Peter Gruen
Councillor Sharon Hamilton
Councillor Mary Harland
Councillor Julie Heselwood
Councillor Asghar Khan

Councillor Graham Latty
Councillor Thomas Leadley
Councillor Richard Lewis
Councillor Christine Macniven
Councillor James McKenna
Councillor Stuart McKenna
Councillor Elizabeth Nash
Councillor John Procter
Councillor Rachael Procter
Councillor Kevin Ritchie
Councillor Brian Selby
Councillor Alice Smart
Councillor Eileen Taylor
Councillor Christine Towler
Councillor Fiona Venner
Councillor Paul Wadsworth
Councillor Neil Walshaw
Councillor Gerald Wilkinson
Councillor Rod Wood

Agenda compiled by:
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Civic Hall
LEEDS LS1 1UR

A G E N D A

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1			ELECTION OF THE CHAIR To formally nominate the Chair for the meeting	
2			APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS To consider any appeals in accordance with Procedure Rule 15.2 of the Access to Information Procedure Rules (in the event of an Appeal the press and public will be excluded) (*In accordance with Procedure Rule 15.2, written notice of an appeal must be received by the Head of Governance Services at least 24 hours before the meeting)	
3			EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC 1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report. 2 To consider whether or not to accept the officers recommendation in respect of the above information. 3 If so, to formally pass the following resolution:- RESOLVED – That the press and public be excluded from the meeting during consideration of those parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information, as follows	

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4			LATE ITEMS To identify items which have been admitted to the agenda by the Chair for consideration (The special circumstances shall be specified in the minutes)	
5			DECLARATIONS OF DISCLOSABLE PECUNIARY INTERESTS To disclose or draw attention to any disclosable pecuniary interests for the purposes of Section 31 of the Localism Act 2011 and paragraphs 13-16 of the Members' Code of Conduct.	
6			APOLOGIES FOR ABSENCE	
7			PLANNING SERVICES PERFORMANCE REPORT QUARTERS 1 TO 3, APRIL TO DECEMBER 2016 To consider the report of the Chief Planning Officer to provide Members with performance for quarters 1 to 3, 2016-17, to the end of December 2017. (Report attached)	1 - 16
8			GOVERNMENT RESPONSE TO THE USE OF PLANNING CONDITIONS CONSULTATION The report of the Chief Planning Officer brings the Government's response to the recent consultation on the use of planning conditions to members' attention. (Report attached)	17 - 38

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9			MEMBER TRAINING 2017-18 To receive the report of the Chief Planning Officer to describe the programme of training for members of the Plans Panel in 2017-18. (Report attached)	39 - 44
10			LEEDS PLANNING ENFORCEMENT PLAN To receive the report of the Chief Planning Officer to outline the key considerations for the enforcement service in Leeds. It sets out the main procedures and principles the service will adopt to regulate development and its priorities for investigations. It gives guidance on what we can do and the timescales for doing so and also how we balance the demands on the service with the resources available. (Report attached)	45 - 56
11			PLANNING REFORM UPDATE To receive the report of the Chief Planning Officer to set out the main Government planning reform proposals in respect of England: the proposed Housing White Paper, the Housing and Planning Act and the Neighbourhood Planning Bill and seeks to update members on the latest developments. (Report attached)	57 - 64
12			CONSIDERATION OF TWO STOREY SIDE EXTENSIONS TO DOMESTIC PROPERTIES To receive the report of the Chief Planning Officer as requested by Members of South and West Plans Panel that a report be presented to Joint Plans Panel advising of any changes in officers' approach to applications on domestic properties which included a two storey side extension. (Report attached)	65 - 86

Item No	Ward/Equal Opportunities	Item Not Open		Page No
13			DATE AND TIME OF NEXT MEETING <u>Third Party Recording</u> Recording of this meeting is allowed to enable those not present to see or hear the proceedings either as they take place (or later) and to enable the reporting of those proceedings. A copy of the recording protocol is available from the contacts named on the front of this agenda. Use of Recordings by Third Parties – code of practice a) Any published recording should be accompanied by a statement of when and where the recording was made, the context of the discussion that took place, and a clear identification of the main speakers and their role or title. b) Those making recordings must not edit the recording in a way that could lead to misinterpretation or misrepresentation of the proceedings or comments made by attendees. In particular there should be no internal editing of published extracts; recordings may start at any point and end at any point but the material between those points must be complete.	

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Report of Chief Planning Officer

Report to Joint Plans Panel

Date: 31 January 2017

Subject: Planning Services performance report quarters 1 to 3, April to December 2016

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	☐ Yes	☒ No
Are there implications for equality and diversity and cohesion and integration?	☐ Yes	☒ No
Is the decision eligible for Call-In?	☐ Yes	☒ No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	☐ Yes	☒ No

Summary of main issues

1. Members usually receive a performance report at the twice yearly Joint Plans Panel meetings - one covering quarters 1 and 2, and the second reporting performance for the full year. However, as quarter two ended in September 2016, the information is no longer current. Therefore in order to provide members with as much up to date information as possible, this report covers performance for quarters 1 to 3, 2016-17, to the end of December, wherever it is available.
2. In quarters 1 to 3 there has been a 2.1% increase in the number of applications compared with the same period last year. There has however been a slight drop in performance in terms of determination of applications in time compared with the previous year, but nevertheless performance remains higher than the national average.
3. For the first time, information on Community Infrastructure Levy funds is included in the report and this will be a feature of future performance reports.
4. It has been a further challenging year, balancing workloads and the available resources within a changing planning environment, brought about by the pick-up in the economy, the reduction in public expenditure and pressure on budgets and the Governments planning reform agenda which continues apace.

Recommendations

5. Members are asked to note the report and comment as they feel appropriate and to receive a further performance report in six months' time.

1 Purpose of this report

- 1.1 At the last Joint Plans Panel meeting on 14 July 2016, members received and noted a year end performance report for planning services for 2015-16. It was resolved that the Joint Plans Panel would receive a report covering quarters 1 and 2 of 2016-17 at its next meeting. As quarter 2 ended in September, performance information up to quarter 3 data has been provided to present the most up to date information available.
- 1.2 This report is presented for information and comment.

2 Background information

- 2.1 In the first three quarters of financial year 2016-17, the service continued to deal with a significant workload, whilst progressing with a number of large and strategically important planning applications. This is in the context of a seemingly ever evolving national planning policy picture, as part of the Government's planning reform agenda and a pick-up in the economy.
- 2.2 At the last Joint Plans Panel meeting, members requested that Community Infrastructure Levy information be reported at the meeting; a new section has now been inserted into this report providing members with an indication of the amount of CIL monies received in the strategic fund and distributed through the Community fund.

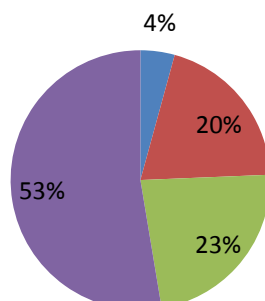
3 Main issues

3.1 Planning performance and workload

- 3.1.1 In the reporting period, there have been 3,565 major, minor and other applications submitted, a 2.1% increase compared with the same period last year. There have been 3,510 decisions made in the reporting period; 97.6% of decisions were made by officers under the delegation scheme, a slight decrease from the same period last year, where 98% decisions were made by officers.
- 3.1.2 There have been 152 major applications submitted in quarters 1 to 3, representing 4% of the total workload of the service. The national average for major applications as a proportion of the total workload is around 3%; therefore Leeds continues to receive a greater number of major schemes than the national average. The workload profile for quarters 1 to 3 is demonstrated below.

Application workload breakdown, quarters 1 to 3 2016-17

■ Majors ■ Minors ■ Others ■ Householder



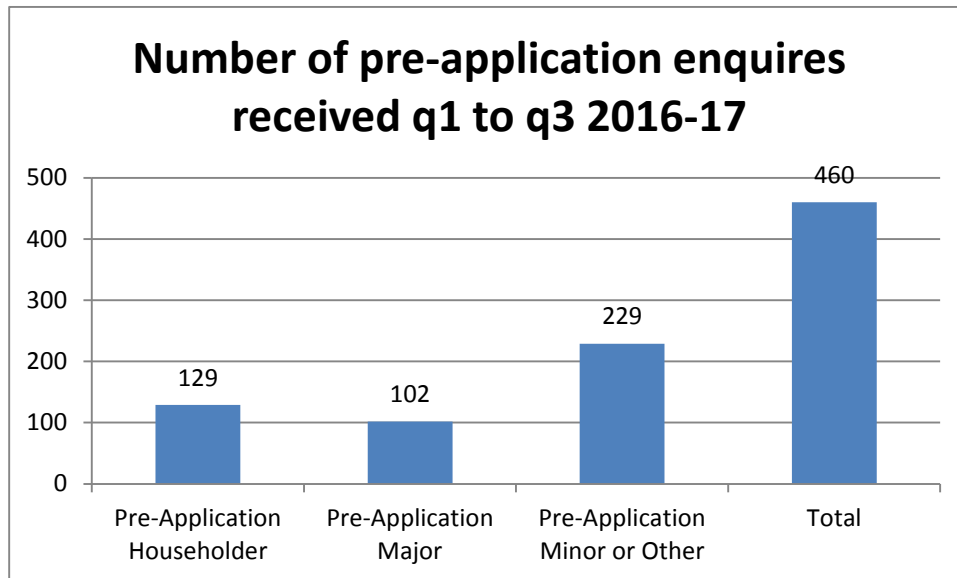
- 3.1.3 Household applications account for 53% of the total workload in this reporting period, with 1876 applications submitted. This is an increase of 4% from the same period last year. It appears that the changes introduced under the amended permitted development regime allowing larger household extensions without the need for formal planning application has had little impact on the numbers of householder planning applications being made in Leeds.
- 3.1.4 Performance on determination times has dropped slightly, but is still well above the statutory timescales, demonstrated in the table below.

	% Majors in time	% Minors in time	% Others in time
Q1 to 3, 2016-17	94.0	89.6	92.7
Q1 to 3, 2015-16	95.8	90.9	93.4
2014-15	93.6	87.2	92.7
2013-14	73.3	70.3	83.3
2012-13	61.3	77.4	88.9

- 3.1.5 The latest national figures for the period July to September 2016 show that LPAs decided 85% of major applications within 13 weeks or within the agreed time; therefore Leeds' performance is significantly above the national average determination rate.
- 3.1.6 At the end of quarter 3, there are 5 major applications in the system which are six months old or more and a decision has not been made. Three of these are long standing complex applications. The consequence of having applications over six months old, without an extension of time agreement is the return of the planning fee under the Planning Guarantee.
- 3.1.7 After 9 months a total of £3,212,247 has been received in planning fees, almost £530,000 up against the projected budget for 2016-17.

3.2 Pre-application

- 3.2.1 In the reporting period the service received 460 pre-application enquiries; of those 102 were for major schemes. The pre-application enquiry service continues to be utilised very well and the service wishes to keep encouraging this dialogue. Early dialogue especially at the pre-application stage has the potential to deal with issues and can lead to swifter determination, once the formal application is made.



- 3.2.2 Additionally, the pre-application enquiry service generated £139,830 income during the reporting period.
- 3.2.3 A review of the pre-application fees will be undertaken in 2017.

3.3 Permitted development

- 3.3.1 In the reporting period the service received 184 notification of prior approval for larger house extensions. 21 came into the service following a neighbour objection and required prior approval. Of these 12 were granted prior approval and 9 were refused. The anticipated volume of additional work in relation to permitted development prior approval has not materialised. However, nor has the predicted fall in the number of planning applications for house extensions with just a small proportion coming back into the service to address.
- 3.3.2 The service has continued to receive a small number of prior approvals for conversion of offices to residential, with 27 made in the reporting period. 23 were granted prior approval. Most of the applications were for the conversion of offices outside of the city centre, just five small scale schemes within the city centre.

3.4 Panel decision making

- 3.4.1 In the first three quarters of 2016-17, 95 applications have been before the Plans Panels and 65 decisions have been made. The full workload breakdown is shown in the table below.

	Meetings	Q1 to Q3 Applications	Q1 to Q3 Pre-app presentations	Q1 to Q3 Position statements	Comments
City	10	16	20	3	1 meeting cancelled
North and East	10	50	2	1	
South and West	8	29	1	1	1 meeting cancelled
Total		95	23	5	

3.4.2 A report went to full Council November 2016 describing the workloads and activity of the three Plans Panels and this is likely to become an annual report to Council.

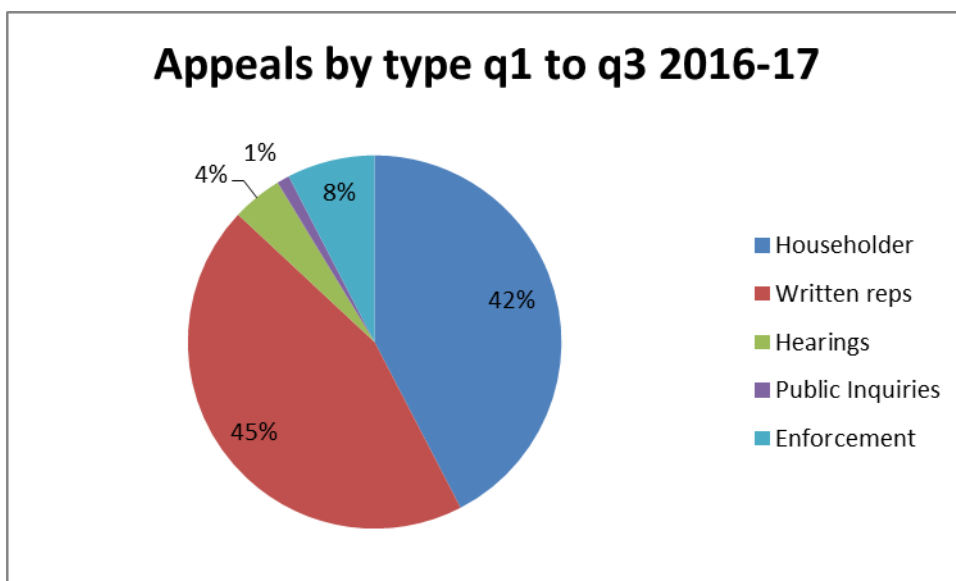
3.5 Major schemes

3.5.1 There have been some significant application submissions, particularly residential schemes in recent months, which include:

- Reserved matters application for retail/leisure plot/phase of the Thorpe Park development including the appearance, landscaping, layout and scale of development for the erection of a series of buildings providing 27,833sqm (299,602sqft) of retail and leisure floor space
- Creation of a new community comprising up to 1,100 dwellings, a new food store (A1) (up to 2,000sq.m) a new local centre, a new school and areas of public open space, together with the means of vehicular access at land to the east of Junction 45 of the M1 Motorway and to the south of Pontefract Lane, Leeds.
- Outline Application for the erection of a Motorway Service Area including means of access and: Facilities Building with viewing platform, up to 100 bedroom Hotel, Skelton Lake Visitor Centre, Fuel Filling Station at land off Junction 45, M1 Motorway
- Residential development (circa 2000 dwellings), retail, health centre, community centre and primary school development, with associated drainage and landscaping on land between Wetherby Road, Skeltons Lane and York Road
- Residential development of 503 houses, on land at Seacroft Hospital, York Road, Leeds, LS14 6UH
- 46 dwellings at land off New Village Way, Churwell, Morley, LS27 7GD
- Erection of 93 houses, new public open space, new roads including link from Throstle Road to Towcester Avenue, Middleton
- The Majestic in City Square, 65,000 sq. ft. office development topped off by an iconic new roof
- Demolition of existing mill buildings and construction of 228 new apartments in 5 Buslingthorpe Lane, Chapeltown

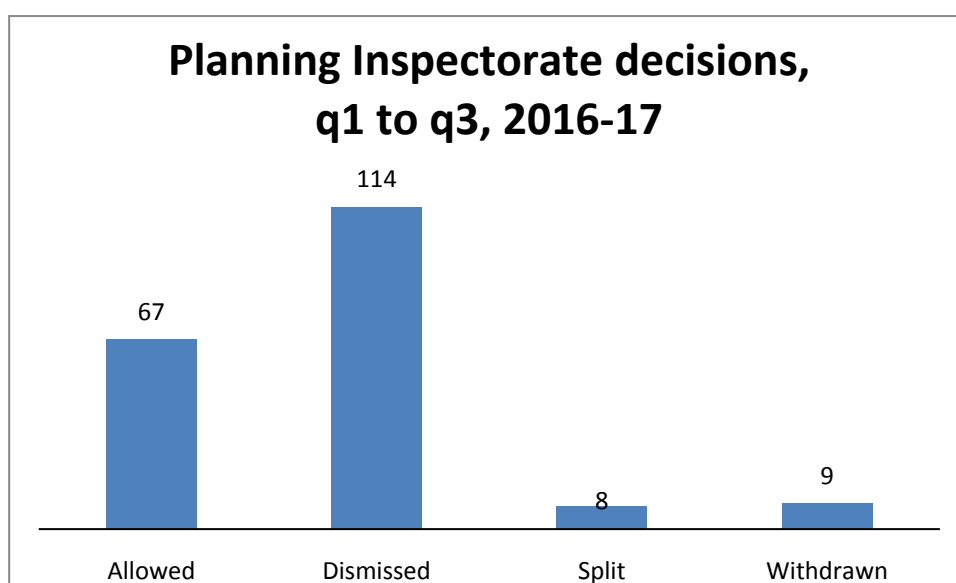
3.6 Appeals

3.6.1 In the first three quarters of 2016-17, the service has received 184 new appeals. The chart below shows how this is broken down by type of appeal.



3.6.2 The majority of the appeals received in quarters 1 to 3 were written representations and those in relation to householder appeals. Just a small percentage of appeals are hearing and public inquiries, with eight hearings and two public inquiries in the reporting period.

3.6.3 In the reporting period the Planning Inspectorate made 189 decisions and 9 appeals were withdrawn. The decisions reached by the Inspectorate are displayed in the chart below



3.6.4 This equates to 65% of appeals being dismissed. This is a drop in the performance rate of dismissed appeals in comparison with the same period last year, 73%, and work will be undertaken to establish where common themes are emerging as well as investigating the high numbers of appealed decisions generally.

3.6.5 19 of the allowed appeals were householder appeals; since the relaxation of the permitted development (PD) on larger house extensions, it appears from analysis

of the Planning Inspectorate's (PINS) decisions that more household extensions are being allowed which are "marginal", given the PD fall-back position. The service will further analyse these appeal decisions and make changes as appropriate.

- 3.6.6 A further eight appeals were for telephone kiosks in the city centre. The kiosks were refused by the service due to a legal point; the Council's view was that kiosks did not benefit from permitted development rights in that the proposed telephone/advertising unit fell outside the Electronic Communications Code and the permitted development rights. The kiosks were for the dual purpose of providing a public telephone service as well as an advertising facility and are therefore subject to separate consent. The Planning Inspectorate took an alternate view and in light of these appeal decisions the service will amend its position in future. However, the appeals on the kiosks have skewed the appeal performance statistics, (without these appeals, performance would be running at 67.5% dismissed) and it is likely that this batch of applications and associated appeals is an isolated occurrence.
- 3.6.7 Analysis of the latest annual figures on decisions from the Planning Inspectorate¹ show that Leeds has the seventh highest rate of S78 appeals and the third highest rate for householder appeals in England. Maintaining control of appeals is particularly important as the Government's new performance regime commencing in 2018 increases the threshold to 10% of an authority's total number of decisions on major and non-major applications made during the assessment period being overturned at appeal.
- 3.6.8 However, the service is currently well within this threshold; based on the last full years data available (2015-16); 4384 planning decisions were made, of which 231 were appealed (5.2%) of which 52 were allowed, or just 1.18% of the total number of decisions made being overturned at appeal. Nevertheless a close watch will be maintained on appeals performance.
- 3.6.9 Decisions were reached on several PAS site appeals during the reporting period:
- Grove Road, Boston Spa for up to 104 new homes, appeal was allowed in a decision by the Secretary of State in May 2016.
 - Sandgate Drive, Kippax. The Council withdrew from this appeal in August 2016 on the basis that it was in the midst of challenging the Grove Road decision. The appeal was allowed.
 - Breary Lane, Bramhope, Bradford Road, East Ardsley and Leeds Road, Collingham. The appeals were conjoined and heard by inspector Ken Barton in February 2016. These three appeals have subsequently been allowed.
 - Bagley Lane, Farsley, The Council was due to defend the release of Bagley Lane Farsley for a third time in January 2017. The Council's request for an extension of time due to the timing of the Ken Barton appeals decision was refused.

¹ Planning Inspectorate Statistics 1 November 2016 <https://www.gov.uk/government/statistics/planning-inspectorate-statistics>

3.7 Community Infrastructure Levy

- 3.7.1 Executive Board, in February 2015, made key decisions around spending of the future Community Infrastructure Levy (CIL) income, directing it into two main funding streams; a strategic fund and a neighbourhood fund, plus up to 5% for administrative costs. Executive Board agreed that the Strategic CIL Fund will be 70-80% of the total CIL received, and that priorities for its spending will be decided on an annual basis as part of the Council's budget setting process, in line with the Regulation 123 List, and taking into account the impact of specific and cumulative infrastructure needs arising from new developments. The balance of the Strategic Fund is currently £685,434.61.
- 3.7.2 In relation to the Neighbourhood CIL Fund, Executive Board agreed that this is to be 15% in an area without a Neighbourhood Plan, and 25% in an area with an adopted Neighbourhood Plan. In town and parish council areas the CIL neighbourhood fund is to be passed directly to those local councils, as required by national CIL regulations. In non-parished areas the decisions about spending are delegated to the relevant Community Committee (as the lowest democratic representative), and the CIL neighbourhood fund ring-fenced by the City Council for that purpose.
- 3.7.3 A breakdown of the CIL balance is available below in comparison for the whole year 2015-16:

	Total CIL paid to date	Total admin fee paid to date	Total neighbourhood fund paid to date	Total strategic fund paid to date
2015/2016	£126,878.21	£6,343.90	£19,031.73	£101,502.58
Q1-3 2016/2017	£769,545.86	£70,181.95	£115,431.88	£583,932.03
Total	£896,424.07	£76,525.85	£134,463.61	£685,434.61

3.7.1 Compliance activity

- 3.7.1 The number of enforcement cases received in the first three quarters of 2016/17 has remained at a consistent high level with 980 cases received. As such the workload through the service remains substantial with a significant number of complex cases being investigated. However, the number of cases on hand has been reduced and maintained overall to under 1000 which has been a long standing service objective. This is a key step in improving the overall handling of cases as it will ultimately assist in reducing officer caseloads as staffing issues are addressed.

	Q1	Q2	Q3	Total
No of cases received	370	299	311	980
No of cases resolved	333	402	317	1052
Initial site visits				
Category 1: Site visit same day/within 1 day. Target	1005 (1)	100%(2)	100%(0)	100%

100%				
Category 2: Site visit within 2 working days. Target 95%	80%(10)	100%(8)	100%(2)	93%
Category 3: Site visit within 10 working days Target 90%	83% 298/360 91%* 328/360	88% 263/297 97%* 290/297	91% 283/309 98%* 305/309	87% 95%*

* Figures for site visits undertaken within 20 working days in accordance with amended temporary target. See below.

3.7.2 Cases received and resolved and performance in undertaking initial site visits

3.7.3 Performance in undertaking initial site visits has been maintained with a revised target of 20 days for category 3 visits. This revised target has been in place throughout the reporting period due to the resource and staff absence experienced by the service.

3.7.4 In relation to the Category 1 and 2 cases the figures relate to a relatively small number of cases. For example there were 20 category 2 cases during the reporting period and only 2 of those cases missed the 2 day target and this is reflected in the figures.

3.7.5 The overall number of open cases on hand has been reduced and currently stands at 971.

3.7.6 Outcomes of case resolved

3.7.7 The number of complaints investigated that that are found to either involve no breach of planning control or are minor infringements over the period sits at approximately 50 %. This has gradually reduced from a figure of 60% in 2010/11.

3.7.8 This can possibly be accounted for by the increased rigour in examining cases as they come into the service. Where there is clearly no breach of planning control, cases have not been opened and complainants advised that the matter will not be investigated and the reason why. The remaining 50% of cases which have been closed involve significant breaches which have been resolved to the satisfaction of the Council through negotiations, granting planning permission or formal enforcement action. Ward Member meetings have continued during the year. Invitations are sent out with the bi monthly key cases list which continues to be sent to both ward members and parish councils with updates on priority cases within each ward.

	Q1	Q2	Q3	AvTotal
No Breach*	42%	34%	38%	38%
Resolved by negotiation	27%	34%	32%	31%

Breach but de-minimis/ not expedient	14%	12%	11%	12%
Planning permission/ CLU granted/ appeal allowed	14%	15%	15%	15%
Enforcement /other notices complied with	3%	5%	4%	4%

*Includes matters that are “permitted development”; where no development or material change of use is involved; matters that were time exempt from enforcement action on investigation; or where approved plans and conditions have been found to have been complied with.

- 3.7.9 **Enforcement and other Notices** A total of 69 enforcement and other notices have been served during the year so far. A greater number of PCNs and S330 notices have been served. These are formal requests for information and used to gain information to establish the nature of the breach or ownership information. This is a continuation of activity levels of previous years. There have been four temporary stop notices served during the period in relation to both unauthorised building works that were continuing on site and not considered acceptable or likely to gain planning permission and to prevent increased occupation of unauthorised travellers sites. We continue to take more formal action than all the other core cities by some distance reflecting the importance Members place in Leeds on the service. Within the first three quarters the following numbers of notices have been served

	Q1	Q2	Q3	Total
Planning Contravention Notices / Section 330 notices	30	35	37	102
Breach of Condition Notice	2	4	2	8
Enforcement Notice	11	22	17	50
S215 Untidy Land Notice	0	0	1	1
Temporary Stop Notice	3	0	1	4
Stop Notice	0	2	0	2

- 3.7.12 The compliance service continues to draft and issue its own notices with input from legal officers only on the more complex cases. This is continually monitored and whilst it does carry some risk, the resource savings in doing this are significant. It does however place increased pressure on case officers in progressing cases within the service and requires additional on-going training.

3.7.13 **Prosecution Outcomes and outstanding cases**

- 3.7.14 A small number of cases have been brought or are being before the courts for non-compliance with enforcement and other notices. These have been in relation to continuing long standing breaches. A number of cases have been sent letters before action and this threat of court action can be effective in securing compliance with notices and remedying the breach in advance of preparing formal papers for the courts.

3.8 **Staffing and resourcing**

- 3.8.1 This year has seen a significant number of changes to the staff resource not least the early retirement of Martin Sellens (Head of Development management). For much of the year the service has been operating with 2.6 Senior Planner posts vacant and the 2 Planner posts in addition 2 Senior Planner posts have also been vacant in the Minerals Team.

- 3.8.2 Internal appointments have been made to 1.6 Senior Planner posts. Including the release of a colleague from Strategic Planning to the 0.6 FTE post. Appointments have also now been made externally to the two Minerals Senior Planner posts. Once the aforementioned officers have bedded in it is intended to move one officer currently seconded to Minerals to the remaining 1.0 FTE Senior Planner Post.
- 3.8.3 In addition the 2 vacant Planner posts have recently been released for external advert
- 3.8.4 Finally a 'resource realignment which affects the majority of the area teams has been undertaken. The purpose of this is to re align resources, skill levels and individuals aspirations and balance all of the aforementioned against workload pressures generated in geographic areas. Appointment to the Planner posts is critical to the completion of this process. Workload Management Meetings involving all of the Area Team Leaders and the Group manager are being held on a fortnightly basis to identify and react early to work pressures and to respond in a flexible manner. However, this has served to highlight the need at Planner level particularly in North East Area Team. To cover the pressure a Planner is on loan from one of the other area teams but this is only a temporary solution as it will ultimately affect the Performance of that Team.
- 3.8.5 In the Enforcement team there has been a number of difficulties over the year. One FTE PO4 has been absent from the team since Sept 2013 and will continue to be until at least until mid-August 2017. This person has not been replaced nor a secondment brought in to carry out their duties and this is of course placing strain on the remaining staff.
- 3.8.6 Other compliance staff have had periods of absence since April 2016 to the present date, one officer has a long term medical condition which results in extended periods of absence, another officer has been diagnosed with a serious condition and has been off since mid Nov 2016 and is not likely to come back before early summer 2017. All of this has added to the pressure felt by other staff to try and pick up additional workload. The team has had to triage complaints and at times complaints of a of a less serious nature have been put on hold until such time as there was capacity to deal with them.

3.9 **Service quality**

3.9.1 **Complaints**

- 3.9.2 From April to December 2016 there has been 119 stage 1 and stage 2 complaints received by the LPA. This compared with 94 complaints received in the same period last year. This is a 26% increase in the number of complaints received when compared to the previous year.
- 3.9.3 The main theme on upheld complaints revolve around the way the planning applications have been to advertised to neighbours and that comments received from neighbours not been taken in to account by officers. Action has been taken to ensure the appropriate number of site notices are erected by printing such notices prior to the application progressing to the planning case officer.

Additionally, when any representations made by separate emails or letters are uploaded to Pubic Access an auto generated email is sent to the planning officer informing them that new comments are available to take into consideration.

- 3.9.4 The Local Government Ombudsman (LGO) reported 14 cases to the Planning Service during this period of which 10 were received closed with no further action being taken by the LGO.
- 3.9.5 Four cases required investigation and a formal response to the LGO. Two of these cases have identified fault. One case where the comments made by Flood Risk Management on a development of two houses were not fully reflected by the Planning Officer in their report on a delegated decision. This was identified prior to the LGO complaint being received. A draft decision has been received from the LGO recognising the Council have taken appropriate steps to mitigate the situation.
- 3.9.6 A further case was raised where a comment on a planning application was not taken in to account by a planning officer. It was identified the matter had been dealt with appropriately by the Council complaints process with an apology being made, and although there was fault, the LGO considered no injustice was caused.

4 Service improvements

4.1 Workflow meetings

- 4.1.1 Planning teams are organised geographically and receive applications relating to a particular area, however the service has lost a number of staff over recent times and this approach to workload distribution can cause issues. There effective deployment of staff and work allocation of new cases is critical to the smooth running of the service and expeditious decision making. In order to achieve flexibility and a proactive approach across five area teams, a new system has been initiated. Fortnightly workflow meetings are attended by the Team leaders and the Planning Group Leader where pressures within teams can be identified early on. Examples of pressures can be where a large major application is submitted but the area team doesn't have the capacity to deal with it and so it can be allocated to an officer in another team. Another example is distribution of the volume of householder applications received in the North East team across the other area teams. The early identification of pressures and flexibility of allocation of new cases is proving to be an effective measure in trying to manage increasing workloads with the existing staffing establishment.

4.2 Certificate of Lawfulness of Existing Use or Development and Certificate of Lawfulness of Proposed Use or Development

- 4.2.1 Not all development needs planning permission and where applicants wish to be certain that the existing use of a building is lawful for planning purposes or that their proposal does not require planning permission, they can apply for a 'Lawful Development Certificate'. This process involves consulting with Legal Services and in the past there have been some difficulties obtaining consultation responses, particularly on those outsourced, resulting in lengthy delays for applicants. A new model has now been adopted whereby officers draft a report

based on a checklist developed by Legal Services, which is then sent to Legal Services for them to check. This change in process means our internal legal service is able to more effectively deal with the responses themselves, which cuts out the outsourcing costs and the necessity of sending out information relating to the application, as this is available to internal users on the planning database-Uniform. This change should speed up response times and hopefully marginally reduce costs.

4.3 Permitted development enquiry service changes

- 4.3.1 The service for a number of years has offered a service whereby for a £50 fee, applicants can submit an enquiry and find out if their proposed development requires planning permission or not. For the fee, customers receive a letter from a planning staff member, who has a deep understanding of the complex rules around permitted development (PD). However, this letter has no legal status and there have been some instances where the advice has been challenged, because of the complexity of the rules on PD. Due to potential changes in the staffing of this enquiry service, planning services will withdraw the permitted development enquiry service in April (after a period of publicity) and instead offer the more formal route of the certificates of lawfulness, as described above.
- 4.3.2 The Planning Portal has recently refreshed its webpages and provides an interactive house of the most common types of developments, such as loft conversions, single storey extensions which provides information of permitted development, enabling members of the public who do not wish to go down the Certificate of Lawfulness route to self-serve much more easily. The Leeds City Council webpage will provide a link to this Planning Portal page, for ease.

4.4 Challenges Ahead

4.4.1 Planning reform

- 4.4.2 The government continues with its planning reform agenda and we are now awaiting the Housing White paper, which will have implications for the planning system and the way new housing is delivered. This is due in January 2017 and the service will need to assess the full impact. The proposals on making changes to the setting of planning application fees may assist in providing a fee to cover the true cost of working on planning applications, which will be helpful from a resource point of view but the proposed introduction of competition in the planning system and planning in principle may have far reaching implications. The granting of permission in principle (through a development order) to land that is allocated for development, whilst may speed matters up, needs to be balanced with the local dimension, which allows communities to continue to have a say on decisions that affect them through the democratic process through their local planning committees.
- 4.4.3 Alternate providers processing planning applications raises a number of issues around local democracy, governance, probity as well as having a potentially significant financial impact on the services provided by the local planning authority.

5 Corporate Considerations

5.1 Consultation and Engagement

- 5.1.1 This report is presented for information and there has not been the need for wide consultation.

5.2 Equality and Diversity / Cohesion and Integration

- 5.2.1 There are no specific equality considerations arising from this report.

5.3 Council policies and City Priorities

- 5.3.1 The effective and expedient determination of planning applications contributes to the overall prosperity of the City and plays a key part in the regeneration and growth agenda. The service makes a key contribution to the delivery of housing growth.

5.4 Resources and value for money

- 5.4.1 There are no specific implications arising from this report. However, measures are being taken to ensure that the service is delivered within the financial constraints.

5.5 Legal Implications, Access to Information and Call In

- 5.5.1 There are no specific legal implications and this report does not relate to a key or major decision.

5.6 Risk Management

- 5.6.1 There are a number of risks associated with the decision making process which are both financial and reputational. Measures, processes and future service improvements outlined in the report seek to minimise the risk of challenge.

6 Conclusions

- 6.1 The upwards trend of increase in workload has continued for the last four years and this reporting period is no different, with numbers of applications up by 2.1% in comparison with the same period last year. However, the performance on determining applications in the statutory timescales or within an agreed time has slipped a little, although still significantly better than the national average. Measures will be put in place to ensure that performance is maintained and improved if possible. Leeds continues to receive more than the national average of major applications as a percentage of overall workload, so considering the complexity and size of some of the schemes in Leeds maintaining such a high performance level is a significant achievement. Emphasis will continue to be placed on the efficient and expeditious determination of applications through the promotion of the pre-application service and use of extensions of time agreements when it is clear that applications cannot be determined in the statutory timeframe.

- 6.2 A close watch will be kept to ensure that there are sufficient resources to maintain the quality and speed of service necessary.
- 6.3 Performance on appeals dismissed has dropped and work will be undertaken to identify any common themes and address accordingly. Leeds also receives a high number of appeals and an investigation as to the nature of the appeals will be undertaken during 2017, as this is a significant workload to resource. However, it is important that the service strikes a balance, maintaining design quality and safeguarding amenity, whilst at the same time not being unreasonable.
- 6.4 The service anticipates a further challenging time ahead, however, the direction of travel and objectives are clear in terms of transforming how we work, maintaining and improving performance levels and continuing to improve services to customers within the resources available to deliver the service.

7 Recommendations

- 7.1 Members are asked to note the report and comment as they feel appropriate and to receive a further performance report in six months' time.

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Report of Chief Planning Officer

Report to Joint Plans Panel

Date: 31 January 2017

Subject: Government response to the use of planning conditions consultation

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	☐ Yes	☐ No
Are there implications for equality and diversity and cohesion and integration?	☐ Yes	☐ No
Is the decision eligible for Call-In?	☐ Yes	☐ No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	☐ Yes	☐ No

Summary of main issues

1. This report brings the Government's response to the recent consultation on the use of planning conditions to members' attention.
2. The consultation response provides detail on the approach the Government will take through legislation on a new process for the written agreement, with the applicant for pre-commencement conditions and prohibition of the use of certain types of conditions.
3. Powers will be introduced in the Neighbourhood Planning Bill on these two areas.
4. The Government response to the consultation is included as an appendix to this report.

Recommendations

5. Members are recommended to note the report.

1 Purpose of this report

- 1.1 The Government published a consultation seeking views on proposals for improving the use of planning conditions on 7 September 2016. The consultation was open for 8 weeks and closed on 2 November 2016. The consultation was designed to help support the development and implementation of policy, and inform debate during the passage of the Neighbourhood Planning Bill (second reading scheduled for 17 January 2017).
- 1.2 In December 2016, the Government issued the response to the consultation and this report is to bring the Government's response to the attention of members.

2 Background information

- 2.1 The Government is of the view that planning conditions perform an important function in shaping planning proposals and achieving sustainable development. However, the Government's concern is that too many restrictive and unnecessary conditions are attached to planning permissions and the impact this has in terms of cost and delays.
- 2.2 In the Budget 2016 the Government announced their intention to legislate to ensure that pre-commencement conditions can only be used with the agreement of the applicant. Building on that announcement, the consultation paper sought views on how the process of prohibiting the use of pre-commencement conditions without the agreement of the applicant would operate and the potential for a wider application of the proposed powers in the Bill to prohibit conditions in certain circumstances.

3 Main issues

- 3.1 The full Government response is attached as appendix 1. The main issues were in relation to the use of pre-commencement conditions and prohibiting use of conditions on particular issues.
- 3.2 On the first issue, the consultation asked for comments on the proposed prohibition of pre-commencement conditions where a local authority did not have the written agreement of the applicant.
- 3.3 Approximately 25% of the responses, mainly from local authorities and archaeological and environmental bodies, stressed the importance of ensuring that certain pre-commencement conditions could still be imposed, for example, by exempting them from the requirement to seek the developer's agreement altogether.
- 3.4 However, in the Government's response to this they state that 'these proposals will not restrict the ability of local planning authorities to seek to impose conditions that are necessary to achieve sustainable development, in line with the National Planning Policy Framework'.
- 3.5 The proposed measures build on current Planning Practice Guidance, which clarifies that it is best practice for a local planning authority to agree proposed

conditions with an applicant before a decision is taken and as early in the planning application process as possible. The Government states that the requirement for the local authority to seek the agreement of the developer to pre-commencement conditions is intended to place that best practice on a statutory footing.

- 3.6 The Government anticipates that LPA workloads will be reduced, by reducing the number of pre-commencement conditions that have to be discharged. This may also have a small impact on planning fee income; the cost for a discharge of condition application is currently £97.
- 3.7 The consultation asked for views on whether permission for conditions should be deemed to be given, if after a period of time the LPA had not been contacted by the developer. This is to ensure that process for agreeing conditions is not unnecessarily delayed by the applicant. The Government's response is that there should be a default period of 10 working days, in addition to the ability for local authorities to agree a longer timescale with the applicant. The default period commences once the LPA has given notice of its intention to impose a pre-commencement condition and sought the agreement of the applicant.
- 3.8 On prohibiting types of planning conditions, the development industry represented about half of the respondents in favour of prohibition, suggesting that legislation would make clear that conditions that do not meet the national policy tests should not be imposed and therefore help speed up housing delivery. Local authorities made up about half of the respondents generally opposed to a prohibition suggesting that the current policy tests contained in the National Planning Policy Framework were a sufficient safeguard, together with the ability of applicants to appeal where planning permission is granted subject to conditions that fail to meet the tests. The Government's response is to prohibit six types of planning conditions which will be set out in draft regulations. These are:
- Conditions that unreasonably impact on the deliverability of a development.
 - Conditions that reserve outline application details.
 - Conditions that require the development to be carried out in its entirety.
 - Conditions that duplicate a requirement for compliance with other regulatory requirements.
 - Conditions requiring land to be given up.
 - Positively worded conditions requiring payment of money or other consideration.
- 3.9 The Government will issue a further consultation on the draft regulations, and prepare updated guidance to support this measure, should the Bill provisions come into force. However, the document stresses that in the event that an applicant refuses to accept a proposed pre-commencement condition, the authority can refuse planning permission. This is to ensure that protections are in place for matters such as heritage, the natural environment, green spaces and measures to mitigate the risk of flooding.

- 3.10 However, there are some concerns about the resourcing impacts of these changes for the LPA and the potential for delays associated with disagreements and subsequent appeals. Additionally, there is the potential for delay in receiving the upfront information required from applicants during determination period, due to the limited ability to impose conditions on certain areas. This could also prove to be more costly to developers who would need to provide that upfront detail and engage consultants during the determination process.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 This report is presented for information

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no Equality and Diversity / Cohesion and Integration issues.

4.3 Council policies and City Priorities

- 4.3.1 The effective and expedient determination of planning applications contributes to the overall prosperity of the City and plays a key part in the regeneration and growth agenda.

4.4 Resources and value for money

- 4.4.1 The new process may have an impact on the resourcing of the service; the process introduces a new stage in the process, which will need to be administered. Additionally, it may have an impact on planning fee income as there is the potential for the number of conditions which require discharging may be reduced. However, it is unlikely that numbers will be significant and the changes will be embedded within the current process and met from existing resources.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 No identified issues.

4.6 Risk Management

- 4.6.1 There are no risks identified in this report.

5 Conclusions

- 5.1 The new approach to pre-commencement conditions and prohibiting the use of specific types of conditions which do not meet the tests in the National Planning Policy Framework will be introduced in the Neighbourhood Planning Bill and should embed the good practice of early engagement between the LPA and applicant, ensuring that unnecessary or inappropriate pre-commencement conditions are avoided. The government see this leading to time savings post permission as there will be fewer conditions to discharge. There will need to be good dialogue between the applicant and the LPA to ensure that application

process is not lengthened, waiting for applicants agreement responses to the draft conditions. The default measure where the applicant does not respond after a defined period should mitigate this, but it will add a further administrative step into the planning process.

- 5.2 The Government will issue a consultation on draft regulations and will also publish updated guidance to support the changes on prohibition of specific conditions, if they are brought forward. This will set out for both applicants and local planning authorities how the measures will work successfully within the existing process.

6 Recommendations

- 6.1 Members are recommended to note the report.

7 Background documents¹

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

Appendix 1

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577341/20161213_-_Condition_ConDoc_Gov_t_Response.pdf



Department for
Communities and
Local Government

Government response to the consultation on improving the use of planning conditions

December 2016



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Introduction

1. The Government published a consultation seeking views on proposals for improving the use of planning conditions on 7 September 2016. The consultation was open for 8 weeks and closed on 2 November 2016. The consultation was designed to help support the development and implementation of policy, and inform debate during the passage of the Neighbourhood Planning Bill (“the Bill”).
2. The consultation paper explained that the Government is of the view that planning conditions perform an important function in shaping planning proposals, and achieving sustainable development. However, we remain concerned that too many overly restrictive and unnecessary conditions are routinely attached to planning permissions, with little regard given to the additional costs and delays that they impose. In the Budget 2016 we announced our intention to legislate to ensure that pre-commencement conditions can only be used with the agreement of the applicant. Building on this announcement, the consultation paper sought views on how the process of prohibiting the use of pre-commencement conditions without the agreement of the applicant would operate, and the potential for a wider application of the proposed powers in the Bill to prohibit conditions in targeted circumstances.
3. As the consultation paper made clear, these proposals will not restrict the ability of local planning authorities to make otherwise unacceptable development acceptable through the use of conditions that are necessary to achieve sustainable development, and in line with the National Planning Policy Framework. We expect that this process would become a part of the dialogue between the applicant and the local planning authority, building on current best practice. In the unlikely event that an applicant refuses to accept a necessary pre-commencement condition proposed by a local planning authority, the authority can refuse planning permission. This will maintain appropriate protections for important matters such as heritage, the natural environment, green spaces, and measures to mitigate the risk of flooding.

Consultation responses

Who responded?

4. The Government would like to thank everyone who responded to the consultation for taking the time to share their views. We have carefully considered all of the responses received. This document provides a summary of the issues raised, alongside the Government's response.
5. 194 responses were received. A breakdown of the types of respondent is shown below:

Response by type of respondent	% breakdown
Local Planning Authorities	40
Development sector	19
Industry representative bodies	6
Interest groups	6
Public sector organisations	4
Professional bodies	3
Parish / Town councils	2
Other	20
Total	100%

Pre-commencement conditions process

Question 1 – Do you have any comments about the proposed process for prohibiting pre-commencement conditions from being imposed where the local authority do not have the written agreement of the applicant?

6. 180 respondents to the consultation provided an answer to this question. Although the question asked about the process, rather than the principle, it is clear from the responses that around 44% of respondents were either in complete support or supported the principle with reservations about the process, with 42% non-supportive. The position of the remaining 14% is unclear.

7. In terms of those detailed points about the process, three points emerged in a number of responses.
8. Approximately 25% of the responses, mainly from local authorities, and archaeological and environmental bodies, stressed the **importance of ensuring that certain pre-commencement conditions could still be imposed**, for example, by exempting them from the requirement to seek the developer's agreement altogether.
9. Around 20% of responses to this question mentioned the potential of the process to **delay the determination of planning applications**. Some respondents believed the process would impact on the ability of local planning authorities to meet the statutory deadlines for determining applications, in particular as consideration of conditions is common towards the latter stages of the decision-making process. Questions were also raised around whether the process would place a disproportionate burden on the consideration of minor applications, create an expectation for applicants to provide more information upfront to support an application, and place local authority resources under further pressure in carrying out such consultations.
10. Around 5% of respondents expressed doubt that **local planning authorities and applicants were likely to come to an agreement on the need for pre-commencement conditions**. Some respondents said that the agreement process was more likely to increase tensions between developers and local planning authorities, and lead to more planning applications being refused, with a resulting increase in appeals. Several respondents, including both developers and local authorities, suggested the introduction of a dispute resolution mechanism to ensure that disagreements were resolved quickly.

Government response

11. The Government recognises the importance and value of certain pre-commencement conditions in promoting sustainable development and ensuring that necessary safeguards are put in place for important matters including heritage and the natural environment. We want to reassure those who expressed concern that these proposals will not restrict the ability of local planning authorities to seek to impose conditions that are necessary to achieve sustainable development, in line with the National Planning Policy Framework.
12. These measures build on current Planning Practice Guidance, which clarifies that it is best practice for a local planning authority to agree proposed conditions with an applicant before a decision is taken, and as early in the planning application process as possible.

13. By introducing a requirement for the local authority to seek the agreement of the developer to pre-commencement conditions, we are seeking to place best practice on a statutory footing. The Government remains of the view set out in the consultation paper that it should be the responsibility of the local planning authority to choose the most appropriate time to seek agreement of the applicant to any pre-commencement conditions and where dialogue begins early, this requirement should not lengthen the process of determining a planning application.
14. We anticipate that this process will reduce the workloads of authorities once permission has been granted by reducing the number of pre-commencement conditions that have to be discharged.
15. Finally, we acknowledge that some respondents called for the inclusion of a fast-track mechanism for appeals. We believe that the introduction of a dispute resolution procedure would add a further formal step to the process which would be likely to cause delays. We also believe that it could actually discourage effective discussions between applicants and local authorities, who may simply wait to use the mediation route as an alternative to meaningful engagement early in the process.

Question 2 – Do you think it would be necessary to set out a default period, after which an applicant's agreement would be deemed to be given? If so, what do you think the default period should be?

16. Of the 159 respondents who answered the question, 86% agreed that a default period should be introduced where an applicant had failed to respond. Support for the proposal for a default period was fairly consistent across sectors: local authorities 76%, development industry 65%, and interest groups 82%. Most agreed that this was necessary to reduce the risk of delays, and some developers felt that it was useful to set a timeframe for the process. The vast majority (92%) of the responses suggested a duration which ranged between 1 week and 1 month, with the majority proposing a period of ten working days.
17. The most frequent comment from respondents was the need to ensure that the process for agreeing conditions was **not unnecessarily delayed by the applicant**. For this reason, the use of a default period was favoured.
18. It was highlighted that if a default period was introduced, it is important to recognise how it would **operate within the statutory deadlines** for determining applications. Respondents were sceptical about how a default period would work without making it more difficult to meet the determination deadlines, taking into account the need for changes following feedback or to resolve disagreements.

19. Respondents also questioned at **what point the default period would begin**. Comments not only addressed whether the period would begin at the point at which the request for agreement to the proposed pre-commencement conditions was sent or received, but also whether the period would restart following the response of the applicant. Furthermore, some suggested that there should be a cut-off period before which the local authority should send its request for agreement. This would help facilitate the timely determination of applications.
20. Several responses suggested that a default period should be **proportionate to the type of application** that was being determined, with separate default periods for applications for minor and major development.
21. Respondents sought **more information on the precise details** of how a default period would work in practice, including what constitutes written agreement.

Government response

22. We do not expect that there will be many instances where an applicant does not respond to a request for agreement to impose a pre-commencement condition but we note that the majority of respondents agreed that we should introduce this default measure, to avoid undue delay in the process, where no response came from the applicant. Many respondents stressed the importance of ensuring that a default period was as short as possible to not hold up the determination of applications. We believe this point should be balanced with allowing a meaningful time for applicants to consider the pre-commencement conditions proposed by the local authority. We therefore **propose a default period of 10 working days**, in addition to the ability for local authorities to agree a longer timescale with the applicant.
23. It is essential that any default period should not impede the timely determination of planning applications, and local authorities should therefore give careful consideration to how this period fits within the statutory determination deadlines. As set out in the consultation paper, we feel it is right that the local authority should decide the precise timing of when they seek the applicant's agreement. We believe that early engagement will help greatly reduce the likelihood of disagreement when the conditions are sent to the applicant.
24. In practice, we intend for the default period to commence once the local planning authority has given notice of its intention to impose a pre-commencement condition and sought the agreement of the applicant. The default period would then elapse 10 days later, unless a longer period had been agreed by the local authority and applicant.

Prohibiting specific types of planning conditions

25. This section of the consultation proposed greater clarity for local planning authorities and applicants about a number of types of conditions which Planning Practice Guidance identifies as not meeting the 6 policy tests in paragraph 206 of the National Planning Policy Framework. The Bill includes a power to allow the Secretary of State to provide that certain conditions may or may not be imposed in defined circumstances in secondary legislation. The consultation sought views on the prohibition of the conditions set out in guidance¹, and asked whether there are any other types that should also be prohibited.

Question 3 – Do you consider that any of the conditions referred to in Table 1 [of the consultation document] should be expressly prohibited in legislation? Please specify which type of conditions you are referring to and give reasons for your views.

26. There were 96 responses in total to Question 3, many provided comments in general terms on the principle of a prohibition, with a number also commenting on the detail of the specific types of conditions referred to in the consultation. There were 27 responses that were generally in favour of a prohibition. The development industry represented about half of respondents in support of the measure. They suggested that there was considerable merit in prohibiting these conditions in legislation as it would make clear that conditions that do not meet the national policy tests should not be imposed, and therefore help speed up housing delivery. A number of local authorities and interest groups also supported the measure in principle, arguing that it would help reduce the number of unnecessary conditions. Local authorities made up about half of the 68 respondents generally opposed to a prohibition, on the basis that the current policy tests contained in the National Planning Policy Framework were a sufficient safeguard, together with the ability of applicants to appeal where planning permission is granted subject to conditions that fail to meet the tests.

Government response

27. The Government notes that many respondents stated that the guidance was already sufficient without provision being made in legislation. However, we believe it is necessary to help ensure that conditions applied by local planning authorities meet the six policy tests in the National Planning Policy Framework. We intend to do this through secondary legislation, expressly prohibiting each of the six conditions below. However, in light of responses we recognise the need to provide greater clarity on the detail of the conditions we propose to prohibit, and this will be set out in draft

¹ <http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/what-approach-should-be-taken-to-imposing-conditions/>

regulations. We will therefore carry out a further consultation on the draft regulations, as well as preparing updated guidance to support this measure, should the Bill provisions come into force.

1: Conditions which unreasonably impact on the deliverability of a development - e.g. disproportionate financial burden

28. More than a quarter of respondents that commented on this type of condition – mostly from the development industry - agreed we should prohibit this type of condition. However, there was considerable opposition from local authorities, largely because they felt it would be difficult to determine ‘unreasonable impact’, which would need to be considered on a case-by-case basis. There was also cross-sector concern that such a prohibition might be used to avoid or challenge conditions which can be justified in planning terms and meet the national policy tests for conditions.

Government response

29. The Government intends to prohibit such conditions in legislation, specifically in order to ensure that a condition which imposes costs on the applicant may only be imposed if the costs do not make the development in question economically unviable. This is a matter of judgement for the local authority to determine in the circumstances of each case. However, where the impact of a proposed scheme is not capable of being mitigated by reasonable conditions, the local authority may need to consider whether they should refuse planning permission for the proposal.

2: Conditions which reserve outline application details

30. The majority of responses on this type of condition showed that there was some misunderstanding of what a prohibition would relate to, and what effect this would have. For instance, there were concerns that this prohibition would restrict the ability of local authorities to impose conditions on outline applications that are necessary to achieve sustainable development, or that it would remove the flexibility afforded by the outline planning application process to submit detailed reserve matters at a later date.

Government response

31. The Government recognises that there was some confusion over the interpretation of Condition 2. Our proposed prohibition would not restrict the ability of local authorities to impose conditions on outline applications that are necessary to achieve sustainable development, or remove the flexibility afforded by the outline planning application process with the ability to submit detailed ‘reserve matters’ at a later date. Rather it would prohibit conditions which reserve for later consideration matters which

are determinable (i.e. which have been particularised in the application in sufficient detail), unless the application makes clear that these matters are included for illustrative purposes only. Having considered the responses received, the Government intends to add this prohibition to regulations which will clarify the position, alongside new guidance.

3: Conditions which require the development to be carried out in its entirety

- 32. About half of respondents on this specific point (mostly from the development sector but also some local authorities) agreed we should prohibit these type of conditions, as they would fail the national policy tests, and in some cases could stop development going ahead, as more time was often needed to secure funding.
- 33. Most local authorities who commented disagreed, stating that without conditions which require development to be carried out in its entirety there was a risk that measures to tackle issues such as drainage and land contamination could be avoided if the development was not completed. A small number of interest groups claimed that such conditions may sometimes be justified if the development site is in a location where visual amenity may be particularly important, such as a conservation area.

Government response

- 34. The conditions we are referring to relate specifically to the full completion of the scheme, and would not prevent separate conditions on other important matters such as flooding and land contamination. At present it is equally possible that such conditions could fail the test of reasonableness both in areas where visual amenity was a significant issue, as in other areas. This prohibition would not impact on the ability of developers to seek planning permission for phased schemes, and local authorities already have the ability to serve completion notices, to encourage the completion of partially-built development. The Government intends to prohibit such conditions and to issue new guidance to support the measure.

4: Conditions which duplicate a requirement for compliance with other regulatory requirements - e.g. building regulations

- 35. From those who commented on this type of condition, there was considerable support among the development industry and a number of local authorities in favour of a prohibition, as it would help avoid duplication of information requests and additional administrative burdens for both developers and authorities.
- 36. About a third of respondents who commented, mostly local authorities, raised concerns about a blanket prohibition on this type of condition, stating that reference

to other regulatory requirements can help address issues which might require emphasis or local interpretation of other regulatory frameworks. Prohibiting this type of condition could also potentially risk inadequate assessment and control of certain critical matters, for example the disposal of surface water.

Government response

37. The Government intends to prohibit such conditions, with exceptions. For example, additional technical requirements exceeding the minimum standards under the Building Regulations 2010. These additional measures apply only where a planning authority makes compliance with them a condition of a grant of planning permission. Otherwise, such a prohibition would not remove the ability of a local authority to impose conditions on important matters, but would act as a reminder not to impose conditions where other legislation has already provided for the issue. Current Planning Practice Guidance clarifies that 'informative notes' can be used by the local planning authority to draw an applicant's attention to other relevant matters – for example, the requirement to seek additional consents under other regimes.

5: Conditions requiring land to be given up

38. More than half of respondents who commented on this type of condition, including both the development industry and local authorities, agreed we should prohibit such conditions, as they could be dealt with through, for instance, section 106 agreements. Also, preventing the use of conditions positively requiring the transfer of land is in accordance with policy and case-law.
39. Around a third of respondents who commented, mostly local authorities, were opposed to the measure, stating that requiring land to be given up might be necessary, for example in the context of surface water drainage.

Government response

40. The Government intends to prohibit such conditions, except certain conditions which prevent or restrict the carrying out of development until a specified action has taken place. Planning Practice Guidance currently makes clear that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It also provides that it may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition) – i.e. prohibiting development authorised by the planning permission or other aspects linked to the planning permission (e.g. occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure).

6: Positively worded conditions requiring payment of money or other consideration

41. More than a quarter of those who responded on this type of condition, made up of local authorities, interest groups and the development industry agreed we should prohibit their use, as the requirement to pay money could be contained within a section 106 agreement.
42. However, a considerable number of respondents who commented on this issue disagreed. Local authorities represented the main group opposed, stating that conditions are considered necessary in the absence of other mechanisms to ensure maintenance of, for instance, sustainable drainage systems over the lifetime of the development. They also felt such conditions should be allowed as an alternative to expensive and time consuming section 106 agreements. Preventing the use of conditions to secure small monetary transactions would not help speed up the planning process, because the alternative is a section 106 obligation, which would take much longer to complete.

Government response

43. The Government intends to prohibit conditions which require money or other consideration, unless it follows current guidance, which clarifies that it may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example, the entering into a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure). If parties are in agreement, this should mean that the s106 agreement process is not as burdensome as described in some cases.

Question 4 – Are there other types of conditions, beyond those listed in Table 1 [of the consultation document], that should be prohibited? Please provide reasons for your views.

44. 137 respondents gave views on this question. Local authorities who responded mostly confirmed that they had no further suggestions to make, or to oppose in principle the idea of prohibiting other types of conditions. Those in the development industry made a number of recommendations for other types of conditions which should be prohibited, including:
 - Conditions which duplicate or split conditions across different regulatory regimes;
 - Conditions which restrict hours/methods of working on a building site;
 - Conditions which require a completion date. This was based on the fact that permissions already have a default time limit within which they must be

commenced or they expire. It was argued that imposing such a condition could lead to a greater number of appeals or an increase in enforcement procedures against non-compliance with the condition.

45. Others, including interest groups provided suggestions for prohibition, including:

- Conditions which require material samples to be agreed up front before development can commence;
- Conditions which require pre-approved drawings to be duplicated and re-submitted for approval;
- Conditions attached to temporary permissions, when the development has a short lifespan.

Government response

46. Many of the recommendations for other types of condition to be prohibited are already dealt with by planning practice guidance or fall within the conditions which we intend to prohibit in regulations, including reserved matters conditions (covered under Condition 2); conditions that duplicate other regimes (covered under Condition 4); and conditions requiring a completion date (covered under Condition 3). The Government does not believe that it is necessary to prohibit any of the other types suggested, as it is possible that they may be imposed in a way that meets the six tests in the National Planning Policy Framework. However, we will keep this matter under review.

Public Sector Equality Duty

- Question 5 –**
- (i) ***Do you have any views about the impact of our proposed changes on people with protected characteristics as defined in section 149 of the Equalities Act 2010?***
 - (ii) ***What evidence do you have on this matter?***
 - (iii) ***If any such impact is negative, is there anything that could be done to mitigate it?***

47. 16 respondents answered this question. The majority of respondents told us that the changes would not have any greater impact on people with protected characteristics.

Positive impact

48. One respondent felt there would be a positive impact on faith communities through the improved use of conditions.

Negative impact

49. However, three respondents were concerned that there may be an impact if authorities were constrained in their ability to impose conditions in a way which may benefit people with protected characteristics.

Government response

50. In the consultation document, and during the passage of the Bill, the Government has clarified that the measures will not remove the ability of local authorities to make otherwise unacceptable development acceptable through the use of planning conditions which are necessary in order to achieve sustainable development, and which meet the policy tests in the National Planning Policy Framework.
51. If we were to prohibit the 6 types of conditions that we have consulted on, this would not prevent local authorities from seeking to impose conditions that meet the national policy tests. The proposed measures will apply to all those seeking planning permission, and therefore we do not consider that such prohibitions would impact those with protected characteristics differently to those without.

Impact on local authorities and business

- Question 6 –**
- (i) Do you have any views about the impact of our proposed changes on businesses or local planning authorities?**
 - (ii) What evidence do you have on this matter?**
 - (iii) If any such impact is negative, is there anything that could be done to mitigate it?**

52. We received comments from 108 of the respondents to the consultation on the impact of the measures on businesses and local planning authorities. Of those who clearly expressed an opinion, 22 respondents (predominantly developers) believed there would be a positive impact on the planning decision-making process, and 52 (predominantly local authorities) thought the impact on the process would be negative.

Positive impact

53. Common reasons for support were that the measures would speed-up the process of negotiating conditions, help ensure that only necessary conditions were imposed, and thereby reduce delays to the delivery of new homes. Respondents also suggested that the changes would reduce costs and workloads for both businesses and local planning authorities with the potential for fewer pre-commencement conditions that would need to be discharged.

Negative impact

54. In terms of the negative impacts of the measures, the responses stated that there were concerns around the resourcing implications for both parties, increased delays associated with disagreements and subsequent appeals, and that the process would lead to greater tensions between applicants and local planning authorities. Respondents also highlighted the potential impacts on developers, for whom they expect the process to prove more costly due to the need to provide more detail upfront and expenditure on consultants during the agreement process, if the ability for local authorities to impose conditions was limited.
55. Respondents typically cited their prior experience in general terms when asked for evidence under question 6(ii).
56. In response to question 6 (iii) there were a number of proposals put forward to help mitigate any negative impact of the measures. These included exempting certain types of pre-commencement conditions from the need for local authorities to obtain the developer's written consent, promoting pre-application engagement, increasing local authority resources, providing a dispute resolution mechanism where there are disagreements, and ensuring that developers are required to justify any challenges to proposed conditions.

Government response

57. The new approach to pre-commencement conditions will embed the good practice of proactive and early engagement between parties, which will ensure that pre-commencement conditions meet the policy tests and ensure unnecessary or inappropriate pre commencement conditions are avoided – with commensurate time savings post permission. Furthermore, with on-going engagement there is no reason why the application process should be lengthened and we propose to introduce a default measure where the applicant does not respond after a defined period. We consider that expressly exempting certain conditions from this prohibition would add unnecessary complexity to the process.
58. In relation to the prohibition of specific conditions and in the light of the consultation responses, we will issue a consultation on draft regulations, and will also **publish updated guidance** to support the changes, if they are brought forward. This will set out for both applicants and local planning authorities how the measures will work successfully within the existing process.

Report of Chief Planning Officer

Report to Joint Plans Panel

Date: 31 January 2017

Subject: Member training 2017-18

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	☐ Yes	☐ No
Are there implications for equality and diversity and cohesion and integration?	☐ Yes	☐ No
Is the decision eligible for Call-In?	☐ Yes	☐ No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	☐ Yes	☐ No

Summary of main issues

1. This report describes the programme of training for members of the Plans Panel in 2017-18.
2. Due to the changes to the Council procedure rules allowing more flexible substitution, there will be more members to undertake the compulsory training this year.
3. In addition to the mandatory training, a programme of other learning opportunities is presented to members, adding further to member's knowledge and providing the most up to date information and approaches available on a range of planning issues.

Recommendations

4. Members are recommended to note the report.

1 Purpose of this report

- 1.1 This report describes the changes made to the Councils Procedure rules in relation to substitution at the Plans Panel meetings and its relation to member training. Attendance as a substitute at Plans Panel will remain contingent upon having received up to date training appropriate to the role and this report goes on to describe the proposed training programme for member for 2017-18.

2 Background information

- 2.1 A report recommending changes to the Council Procedure Rules to allow greater flexibility around the appointment of substitutes to Plans Panels went to the General Purposes Committee (GPC) on December 5th 2016.
- 2.2 Members of GPC agreed that in relation to each Plans Panel, the Council shall appoint a list of substitute members comprising all other members of the other Plans Panels, the Development Plan Panel and the Licensing Committee. In addition, the list may include any members, nominated by their group Whip, who are not members of these committees, but have received appropriate training. A nominated member shall be entitled to attend meetings in place of a regular member, subject to the substitute member having received appropriate training and will also be bound by the Planning Code of Good Practice and other relevant policies and procedures whilst acting as a voting member of the Plans Panel. The recommendations from the General Purposes Committee went to Full Council on 11 January, who agreed the amendments to the Procedure Rules.
- 2.3 Article 8.2.2 of the Council's Constitution, says that Members of the Plans Panels must complete all compulsory training and shall not sit as a Member of the Panel unless such training has been undertaken in accordance with the Council's prescribed training programme

3 Main issues

3.1 Compulsory training

- 3.2 The compulsory training session in order to sit on Panel comprises one or two session(s), depending on the experience of members on planning matters and comprises:

- Planning update: This session updates members with the latest legislation and planning guidance. It also covers any changes to the planning system which will impact on the work of members. All substitute members will attend this session.
- Additional training for members new to the Plans Panel. This training is run by the Area Planning Officer who goes through the procedural issues associated with the running of the Panel and the basic principles of planning-determine in accordance with development plan/what are material planning considerations and so on etc. In this session officers will also identify some key planning issues, hot topics, direction of travel for policy and probity issues. All substitute members will also attend this session.

3.3 **Additional training and learning opportunities**

3.4 Member site visit tour

- 3.4.1 A tour of past sites which have already received planning permission and have been built will be organised. This allows reflection on the relevant issues at the time of determination on particular applications and how the development has worked out in practice.
- 3.4.2 It is anticipated that this tour will be in Spring 2017 and the list of sites will be drawn up in agreement with the Joint Member Officer Working Group.
- 3.4.3 A request from a Plans Panel member to visit a site outside of the authority to look at a new development is likely to be the subject of a separate site visit.

3.5 Workshop series

- 3.5.1 The Joint Member Officer Working Group has requested that a series of workshops should be held throughout the year focussing on particular planning issues. The workshops will be facilitated by internal staff and will be tailored to address the needs and issues relevant to Leeds. Workshop topics will be discussed and agreed with the Joint Member Officer Working Group.
- 3.5.2 It is anticipated that workshops will be offered on current issues such as hot food takeaways, side extensions and housing design. In addition to providing members with the latest case law, appeal information and council position, the sharing of this information will try to ensure some consistency of decision making across the three Plans Panels. This will be particularly important in relation to decisions to refuse applications, where a consistent approach is important to evidence the decision. The Government's new performance regime commencing in 2018 increases the threshold to 10% of an authority's total number of decisions on major and non-major applications being overturned at appeal, so a consistent approach is vital.
- 3.5.3 The first workshop took place on 13th January on tall buildings. John Thorpe and internal consultees provided a refresher as the existing SPD was published in 2007; much has changed in particular in the South Bank area of the city in relation to tall buildings.

3.6 Chamber of Commerce/ Planning Reform group

- 3.6.1 In June 2016, a successful event was run on viability. The session covered three different perspectives: the Council, District Valuer and that of the volume house builders. The differing perspectives particularly that of the development industry, provided an interesting and challenging look at viability issues.
- 3.6.2 The Chamber of Commerce's Planning Reform Group has offered to run a session with elected members looking at planning from a developer's perspective. This is likely to be a further challenging session, with issues covering housing growth, Government reform, future developments and collaborative working.
- 3.6.3 This session is scheduled for autumn 2017.

3.7 Shadowing planning officers

- 3.7.1 Several years ago the service offered members the opportunity to spend some time in the planning office, shadowing a planning officer. Feedback from members was very positive indicating that the training had provided a valuable insight to the process involved in coming to a recommendation. Such training will be offered again to Members during 2017-18.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.2 Individual elements of the proposed training programme for members have been discussed with the Executive Member for Regeneration, Transport and Planning and with the Joint Member Officer Working Group.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no Equality and Diversity / Cohesion and Integration issues.

4.3 Council policies and City Priorities

- 4.3.1 The effective and expedient determination of planning applications contributes to the overall prosperity of the City and plays a key part in the regeneration and growth agenda.

4.4 Resources and value for money

- 4.4.1 Member training in Leeds is long established and is recognised to be critically important to quality decision making. The programme offered in 2017-18, whilst has resource implications primarily in terms of member and officer time, represents good value for money as it is being delivered flexibly and imaginatively in-house.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 No identified issues.

4.6 Risk Management

- 4.6.1 There are reputational risks associated with a lack of high quality consistent decision making. The Plans Panels are the shop window to the planning system in Leeds and therefore it's critical to adequately support and equip members with the knowledge and skills needed in order for them to discharge their duties effectively.

5 Conclusions

- 5.1 Planning legislation and guidance can be complex. Our current approach of providing members with training on the planning process when first serving on the Plans Panel and updates on changes to legislation or procedures is endorsed as good practice by the Local Government Association. This is the mandatory training required in order to serve on a Panel.

- 5.2 The discretionary additional programme of training for 2017-18 offers a diverse range of learning opportunities for members, to suit varying needs and requirements.

6 Recommendations

- 6.1 Members are recommended to note the report.

7 Background documents¹

- 7.1

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

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Report author: Helen Farrer
Tel: 0113 3788064

Report of Chief Planning Officer

Report to Joint Plans Panel

Date: 31 January 2017

Subject: Leeds Planning Enforcement Plan

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	☐ Yes	☒ No
Are there implications for equality and diversity and cohesion and integration?	☐ Yes	☒ No
Is the decision eligible for Call-In?	☐ Yes	☒ No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	☐ Yes	☒ No

1 Summary of main issues

- 2 Paragraph 207 of the National planning Policy Framework recommends that Planning authorities should secure an enforcement plan to manage enforcement proactively and set out how cases will be investigated and actioned . It states “ *Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so*”
- 3 The attached draft report outlines the key considerations for the enforcement service in Leeds. It sets out the main procedures and principles the service will adopt to regulate development and its priorities for investigations. It gives guidance on what we can do and the timescales for doing so and also how we balance the demands on the service with the resources available.
- 4 The report is presented to Joint plans Panel Members for comment and agreement for wider consultation with Ward Members prior to approving the plan as a working document for the service.

5 Recommendations

- 6 Members are asked to note the report, comment as considered appropriate and to agree to take forward the plan for wider consultation with ward members.

7 Corporate Considerations

7.1 Consultation and Engagement

- 7.1.1 The Joint Member Officer Working Group, a cross party group of members, comprising the Plans Panel Chairs, Development Plans Panel Chair, Executive Board Member and representatives from the other political parties have been briefed on the emerging plan.

7.2 Equality and Diversity / Cohesion and Integration

- 7.2.1 There are no specific equality considerations directly arising from this report. However, an equality impact assessment will be carried out on the Local Enforcement Plan prior to adoption.

7.3 Council policies and the Best Council Plan

- 7.3.1 The service makes a key contribution in the regeneration of the city and to the delivery of housing growth, a priority in the Best Council Plan and one of the Breakthrough projects. The Local Enforcement Plan sets out our policy and procedure for enforcing planning control in the city, ensuring the Council's enforcement resources are put to the best use in dealing with breaches of planning control that threaten the quality of the local built and natural environment or the amenities of residents. The planning system operates to regulate development and the use of land in the community's interest having regard to the development plan and other material planning considerations. The effective and proper enforcement of planning control is essential to maintain public confidence in the planning system.

7.4 Resources and value for money

- 7.4.1 There are no specific implications arising from this report. However, measures are being taken to ensure that the service is delivered within the present financial climate and close monitoring occurs of the budget.

7.5 Legal Implications, Access to Information and Call In

- 7.5.1 There are no specific legal implications and this report does not relate to a key or major decision.

7.6 Risk Management

- 7.6.1 There are a number of risks associated with the decision making process which are both financial and reputational. Measures, processes and future service improvements outlined in the report seek to minimise the risk of challenge.

1. Purpose of the Plan

- 1.1 This document aims to help you get the best out of the Development Management Compliance Service. It sets out the main principles and procedures the Council will adopt to regulate and monitor development and how it will communicate with service users, prioritise cases coming into the service and the range of options and actions available to us to remedy any given situation.
- 1.2 The purpose of the planning enforcement plan is to assist the residents of Leeds and to ensure that appropriate development is undertaken which helps preserve the environment and maintains confidence in the planning system. The enforcement service investigates breaches of planning control and seeks to deal with them in a positive way that maintains the environment and special character of areas. In order to give the best possible service, it is vital that we give clear guidance on what we **can do** and how we balance demands on our services against the resources available to us.

2.0 Introduction

- 2.1 Leeds is a vibrant city with a strong economy that aims to protect its environment. The city and district is a rich and varied place with a distinctive settlement hierarchy. The main urban area covers nearly a third of the district and includes the city centre, inner city and outer suburbs. The rural parts of Leeds have a variety of individual characters and identities and include larger settlements such as Wetherby and Otley as well as several smaller towns and villages. The heritage of the historic buildings and public spaces across the Leeds District linked with its noticeable green environment helps give the city its unique character.
- 2.2 Planning laws and policies are designed to control the development and use of land and buildings in the public's interest. They are not meant to protect the private interests of one person against the activities of another. The relevant background legislation to these powers is contained primarily within the Town and Country Planning Act 1990 (as amended) the Planning (Listed Buildings and Conservation Area) Act 1990 (as amended). This legislation is supported by Government advice, which includes the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).
- 2.3 From the information we give below, we hope that you will be able to measure our performance and decide if we have met our own demanding standards. Should you be unhappy with our performance, we hope that Council officers can rectify any problems or explain why we cannot meet your expectations.

3.0 Enforcement

- 3.1 Development is sometimes carried out without planning permission or does not properly follow the detailed plans which have been approved by the Council. Cases such as these can cause serious harm to the way in which

people live. Residents and businesses have a right to expect that harmful activities are dealt with effectively.

- 3.2 Certain types of building works or changes of use however are defined as 'permitted development' meaning that an application for planning permission is not required. Whether or not planning permission is required depends on several factors and these are detailed in the Town and Country Planning [General Permitted Development] Order 2015. Help in understanding 'permitted development' can be found in booklets published by the Department for Communities & Local Government and via the Planning Portal. <http://www.planningportal.gov.uk/permission/>
- 3.3 Planning enforcement can only be considered where the Building Work or Material Change of Use being undertaken requires planning permission. An initial investigation by the enforcement officer will seek to determine this. There are a number of other situations that can be considered for planning enforcement which includes:
- Unauthorised display of advertisements;
 - Unauthorised works to protected trees;
 - Unauthorised work to buildings listed as being of special architectural or historic interest;
 - Unauthorised demolition of certain buildings within a Conservation Area;
 - Unauthorised storage of certain quantities of hazardous materials;
 - Land that is in such a poor condition that it adversely affects the amenity of the area.
- 3.4 The term used to describe such cases is, 'breach of planning control.' There can be many reasons why a breach of control has occurred ranging from a simple oversight or lack of knowledge to a deliberate attempt to secure development that is unacceptable. These factors are all considered in deciding how to prioritise cases coming into the service.

4.0 Expediency

- 4.1 The National Planning Policy Framework stipulates that "effective enforcement is important as a means of maintaining public confidence in the planning system" Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control." It is important that the public have confidence in the planning system. The enforcement service investigates possible breaches of planning control and seeks to deal with them in a positive way either through negotiation or direct action.
- 4.2 Planning laws are designed to control the development and use of land and buildings in the public interest. They are not meant to protect the private interests of one person against the activities of another.
- 4.3 Carrying out work or changing the use of land or buildings without planning permission is not a criminal offence. In most cases the Council will give the owner an opportunity to apply for retrospective planning permission. However, where serious harm is being caused, the Council will take firm action quickly.

4.4 The Council must operate its enforcement activities within Government guidelines and in accordance with Council policy. This means that:

- The Council must decide whether the breach of control unacceptably affects the quality of life or amenity of an area;
- Action should not be taken just because development has started without planning permission;
- The Council does not always have to take action but the particular circumstances of the case should always be considered;
- The council will not normally take formal action against a minor breach of control that causes no real harm simply to ensure the submission of the necessary applications.

However:

- Enforcement action will be taken quickly when it is necessary.

5.0 Harm

5.1 Harm resulting from a breach of planning control could concern amenity or highway safety issues and include noise nuisance, loss of daylight or privacy, or danger from increased traffic flows. Harm to the visual amenity of an area could occur for example through unauthorised work to: - a listed building, demolition within a Conservation Area or work to a protected tree as well as on going building works and operations.

5.2 Once the alleged breach has been investigated and it has been established that harm is being caused, action may then be taken.

5.3 In dealing with planning enforcement matters and decisions to take action we will always have regard to :

- Objectives of the development plan comprising the Core Strategy and Site Allocations Plan by ensuring that unauthorised development does not undermine the purpose and credibility of its policies and proposals;
- Planning permissions and consents by ensuring that developments are largely in accordance with approved plans, conditions and obligations;
- Protection of listed buildings, conservation areas, protected trees and other scheduled sites in the built and natural environment;
- Protection of residential amenity from undue disturbance resulting from commercial activities and from inappropriate domestic and commercial buildings e.g. noise, dust, overshadowing, loss of outlook;
- Where serious harm is being caused, enforcement action will be swift and proportionate to remedy the effects of the breach of planning control.

Harm would **not**, for example, include:

- loss of value to a neighbouring property;
- competition to another business;
- loss of an individual's view or trespass onto someone else's land;
- Party wall issues;

- Private civil issues relating to for example covenants or maintenance of private roads.

5.4 It may be possible to address issues such as these by way of civil action although this is a matter for the individual to pursue and is not an area where the Council would be involved.

6.0 New Complaints and Cases

6.1 Anyone who believes that a breach of planning control has occurred can make a complaint. Except for urgent cases, all complaints should be made preferably by e mail to planning.enforcement@leeds.gov.uk or alternatively in writing. Complainants who have difficulty writing down their concerns can contact the Development Enquiry Centre for assistance (see useful contacts). Please be prepared to identify yourself so that your complaint may be investigated and give as much detail as possible including the address and the nature of your concerns. It is often not possible to investigate anonymous complaints due to lack of witnesses or evidence. Where a retrospective application for permission is made to regularise unauthorised development, publicity and consultation will be carried out, and people given the opportunity to comment before a decision is taken.

6.2 In urgent cases please contact the Development Enquiry Centre (Tel 2224409) and give as much detail as possible of your concerns. If you also raise your complaint with a Councillor, please advise them of any contact you may have had with the Compliance Service and give them the name of the officer you have spoken to or who is dealing with your complaint where possible.

7.0 PLEASE NOTE

7.1 ***All initial complaints are dealt with in confidence and details of the complainants will not be made known without their agreement. However, the substance of the complaints themselves is not confidential. In some cases it may be necessary to rely on evidence from complainants in order to take action and you will need to consider whether you are willing to actively assist the Council by collecting evidence and acting as a witness at an appeal or in Court. The Council's Enforcement Service will explain what may be required of you in these cases.***

8.0 Expectations – What Happens to your complaint?

8.1 Written complaints will normally be acknowledged within 3 days of receipt and each case will be individually assessed on its merits. You will be informed of the name of the Enforcement Officer who will be dealing with your complaint. The officer will then check the council's records, inspect the site and interview witnesses if needed in order to establish whether a breach of planning control has occurred. You will receive an update once these initial checks have been undertaken which will advise how the case is likely to progress. If a breach has occurred that is harmful the person responsible may be asked to put it right, either by the making of a planning application or by stopping the unauthorised work. If this approach fails, the Council can then consider taking

formal enforcement action. The Council may prosecute offenders who do not comply with an Enforcement Notice.

- 8.2 Where the Council decides not to take formal enforcement action or no breach of planning control has taken place, the complainant will be notified by e mail or in writing of the reason for the Council's decision. These matters would mainly relate to development that would be granted planning permission without conditions.
- 8.3 Where it is decided to take enforcement action in response to a breach of planning control, the council has a range of statutory powers available to it to seek information about, and to remedy the activities being undertaken and the persons involved. Wherever possible, except in the most serious circumstances we will seek to engage with landowners to address matters without the need for a formal notice. This is often more successful, quicker and economical than formal enforcement options. When this has failed, the council can serve statutory notices setting out what actions are required to remedy the breach of planning control and when necessary take prosecution action, seek court injunctions and undertake works in default.
- 8.4 There are statutory time limits within which enforcement action must be taken or the breach becomes immune and the unauthorised development is then lawful. For example, enforcement action cannot be taken against building works or the change of use of a building to a single dwelling, including the subdivision of a house into self-contained flats, if the development took place more than four years ago. The time limit in respect of other changes of use or the failure to comply with planning condition is ten years. There is no statutory time limitation on taking action against works to listed buildings.

9.0 Priorities and Timescales

- 9.1 Within the service there are 3 categories of complaint depending on the alleged breach of planning control.

Priority 1- where there is a likelihood of irreparable harm occurring, the site will be visited within 1 working day of the complaint. This includes works to protected trees, listed buildings and demolitions within a conservation area as well as other works that are considered to be causing immediate and irreparable harm to the amenity of an area.

Priority 2- where there is a significant nuisance or impact on amenity, we will aim to visit within 5 working days.

Priority 3 This relates to less urgent cases and we will aim to visit within 20 working days.

The table below identifies the order of enforcement priorities that will generally be applied to cases coming into the service:

LEEDS PLANNING ENFORCEMENT COMPLAINTS ORDER OF PRIORITY			
1	A	High	Unauthorised works (including alteration, partial demolition or demolition) to a Listed Building or a building within a Conservation Area
1	B	High	Unauthorised works to trees that are protected, either by a Tree Preservation Order or by virtue of the tree being situated within a Conservation Area, or involving works to a hedgerow that is protected by law
1	C	High	Any other unauthorised development which in the opinion of the local planning authority causes irreversible and serious demonstrable harm or presents an immediate and serious danger to the public.
2	D	Medium	Unauthorised development/activities within the green belt, a Site of Special Scientific Interest, within a Conservation Area, within an Area of Article 4 Direction or within any other national or locally-designated site of nature conservation
2	E	Medium	Any unauthorised development/activity or breach of a planning condition which in the opinion of the local planning authority causes demonstrable, continuous harm to the locality, or the living conditions of local residents
2	F	Medium	Unauthorised advertisements which have a detrimental impact upon public/highway safety or visual amenity
2	G	Medium	Unauthorised development where the time limit for pursuing enforcement action might expire within 6 months
3	H	Low	Technical breaches of planning control that marginally exceed permitted development rights
3	I	Low	Minor variations from approved plans that do not, in the opinion of the local planning authority, appear to cause demonstrable harm to the locality or the living conditions of local residents
3	J	Low	Unauthorised advertisements that in the opinion of the local planning authority, lie outside any of the categories listed above.
3	K	Lowest	Minor unauthorised development that would be likely, in the opinion of the local planning authority, to receive retrospective planning permission or would result in formal enforcement action not being instigated.
3	L	Lowest	Complaints that are made anonymously

9.2 These priorities can change should further information be received or the initial site visit raise further issues. In a number of cases it will sometimes be necessary to undertake further monitoring to build up a picture of the nature and scale of the problem. We will on occasion ask complainants to assist us in this process by keeping log sheets over a period of time.

10.0 What Factors will we take into account?

- 10.1 Following an initial visit we will assess what has taken place and if there is a planning breach decide the following:
- What is the planning harm – how serious is it ?
 - Would it be likely to be granted planning permission (with or without conditions)?
 - Is it a minor breach (technical) or more serious?
 - Can we resolve it simply by negotiation or modification?
 - Is action needed quickly because the development or activity is harmful and not acceptable?
- 10.2 The decided actions will need to be proportional to the breach and balanced with the available resource. Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity as does the time taken for their resolution.
- 10.3 If the investigations indicate that a breach of control has occurred that justifies enforcement action an Enforcement Notice will be served. The Notice takes a minimum period of 1 month to come into effect during which time the person(s) served with the notice can appeal against it to the Secretary of State for Communities & Local Government via the Planning Inspectorate. An Enforcement Notice may be quashed or revised by the Planning Inspector appointed by the Secretary of State.
- 10.4 Where an appeal is lodged the Council can take no further action until the appeal has been decided. It is not unusual for the appeal process to take several months. If a person decides to appeal against an enforcement notice; this will add to the time taken to resolve the case. In consequence it is not possible to give a standard time for dealing with enforcement cases.
- 10.5 An Enforcement Notice specifies the time period needed for compliance. This period will take account of the steps required to comply with the Notice and will set a practical and reasonable period for their completion. However, if someone does not comply with a notice in the stated time period they may be prosecuted with the possibility of being fined by the Courts.
- 10.6 Where a breach of control is causing serious harm to public amenity in the neighbourhood of a site the Council can seek immediate remedial action. This action may involve the serving of a Stop Notice when an Enforcement Notice has already been issued. Temporary Stop notices may be served when an immediate cessation of the harmful activity is required, usually before an enforcement notice comes into effect. They can only last a maximum of 28 days and may only be served once.
- 10.7 It is helpful to contact the Enforcement Service whenever you have any new information that the council needs to consider in handling the case.
- 10.8 Notwithstanding the above we will endeavour to provide you with regular updates regarding the progress of a case and will regularly review all our

cases to ensure the most effective action plan is in place to secure a satisfactory outcome as quickly as possible.

11.0 Monitoring and Performance

- 11.1 We will seek feedback from our customers on the quality of service they have received by requesting feedback through an annual customer survey on 10% of our cases. We will undertake case reviews of all live cases at both seven weeks and 13 weeks and continue to do so every 13 weeks until the matter has been concluded. We will aim to first time visit 80% of all new cases within the timescales stated. For 50% of cases where there is an actionable breach to reach a key milestone in case progression by 13 weeks. Monitoring against targets will be undertaken on a quarterly basis against the above performance standards. We will also measure our success rates at enforcement appeals and prosecutions across the service.

12.0 What if someone complains about you?

- 12.1 If you are contacted about an alleged breach of planning control you are entitled to know what the allegation is (but not who made it), and have the opportunity to explain your side of the case.
- 12.2 If you are not involved, no action will be taken against you. If you are involved, the Enforcement Service will advise you of the details of the breach and how it can be put right.
- 12.3 Your co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development or by ceasing the unauthorised work. A reasonable period of time will be allowed for you to do this.
- 12.4 In some circumstances you may be invited to submit a retrospective planning application if it is considered that permission may be granted.
- 12.5 If you are running a business which is threatened by enforcement action, you will be helped to identify alternative premises so as to minimise the possible impact on the business. This does not mean that the enforcement action will be delayed or stopped.
- 12.6 If you are issued with an Enforcement Notice you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance.
- 12.7 You may be served with a 'Planning Contravention Notice' that requires information concerning the development carried out. This Notice is used to establish the facts of what has occurred so that the Council can determine whether a breach of control has taken place, and whether formal enforcement action is appropriate. The implications of not completing and returning the Notice will be explained to you.

13.0 What to do if something goes wrong

- 13.1 If you feel that there is unreasonable delay, or an error in the way in which an enforcement investigation is being carried out, you should contact the Compliance Team in the first instance. They will investigate the matter, review the circumstances and advise you within 10 days about what action will be taken. If a matter requires further investigation, you will be advised of this at the time. If you are still dissatisfied with the service, then you can make a formal complaint – details of the procedure for which will be sent to you. Please remember that the complaints procedure does not apply to matters where there is a legal remedy or appeals process. You can, of course, contact your local Councillor at any time.
- 13.2 If you remain dissatisfied with the outcome of any investigation, you may complain to the Ombudsman and information on how to do this will be given to you by the Council. The Ombudsman will not normally deal with a complaint unless it has first been through the Council's own complaint procedures and deals only with aspects concerning the conduct of the investigation.
- 13.3 We always welcome constructive criticism and any ideas on how we can improve our services. Please contact us if you can suggest ways of improving the service.

Useful Contacts

Planning.enforcement@leeds.gov.uk

Planning Compliance
Leeds City Council
Leonardo Buildings
2 Rossington Street
Leeds
LS2 8HD

Development Enquiry Centre
dec@leeds.gov.uk
Tel 0113 222 4409

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Report of Chief Planning Officer

Report to Joint Plans Panel

Date: 31 January 2017

Subject: Planning reform update

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	☐ Yes	☒ No
Are there implications for equality and diversity and cohesion and integration?	☐ Yes	☒ No
Is the decision eligible for Call-In?	☐ Yes	☒ No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	☐ Yes	☒ No

Summary of main issues

1. Reforms to make the planning system quicker and simpler have been a feature of Government policy for the last few years and the pace of change is not abating.
2. The recently enacted Housing and Planning Act contains a raft of provisions relating to both changes to the planning process and policy directions to support housing growth in particular.
3. The Government has indicated that a Housing White Paper will be published in January 2017, but at the time of writing this report, it has not yet been produced. Again it is likely to contain provisions to support the delivery of new housing and is likely to provide a response to many of the outstanding consultations.
4. The Neighbourhood and Planning Bill is currently going through the parliamentary process and has two aims to help identify and free up more land to build homes on in order to give communities as much certainty as possible about where and when development will take place and to speed up the delivery of those new homes.

Recommendations

5. Members are recommended to note the report

1 Purpose of this report

- 1.1 The continuing pace of government reform of planning has not slowed down in the last 12 months; several pieces of legislation, white papers and bills have been issued or are at various stages in the parliamentary process. This report sets out the main Government planning reform proposals in respect of England: the proposed Housing White Paper, the Housing and Planning Act and the Neighbourhood Planning Bill and seeks to update members on the latest developments.

2 Background information

- 2.1 Reforms aimed at making the planning process quicker and simpler to use, in particular to support house building, are high on the Government's agenda. In the December 2015 Consultation on proposed changes to national planning policy, the Government proposed a number of changes to the National Planning Policy Framework (NPPF), to better support the development of housing on certain types of land. Feedback is currently being analysed and a response to this consultation has not yet been published.
- 2.2 Following announcements made at the Conservative Party Conference 2016 the Government is expected to publish a Housing White Paper which will contain a number of planning policies and draw together a number of outstanding Government responses on planning consultations. In particular, it is expected that the White Paper will contain provision on the resourcing of local authority planning departments in terms of skills and finances. The report is due in January 2017.
- 2.3 The Housing and Planning act was enacted in May 2016 and the technical consultation on implementing the changes closed in April 2016. We are awaiting the Government response to this consultation.
- 2.4 Further reform to the planning system is provided in the Neighbourhood Planning Bill 2016-17 which is progressing through Parliament. The Bill will make some changes to the neighbourhood planning system, the use of pre-commencement planning conditions and the compulsory purchase process. The aim is to speed up the delivery of new homes.

3 Main issues

3.1 Forthcoming Housing White Paper

- 3.1.1 The Government has indicated that there will be a "Housing White Paper" to set an overall strategy for building new homes. The White Paper is expected to be published in January 2017 and the Government indicated that it may contain provisions in the following areas:
- Skills agenda: making sure that local planning departments have people with the right skills and that there are enough people within the construction industry, with the right skills, to build homes

- Incentives to encourage councils to use the duty-to-cooperate more effectively in respect of housing provision
- “Minimising” planning decisions that are taken contrary to Neighbourhood Plan policies
- Policies on the setting of planning fees
- The operation of the Community Infrastructure Levy and its relationship to section 106 planning obligations
- The situations where the Secretary of State may use Neighbourhood Planning Bill powers to direct two or more Local Planning authorities to make a joint Local Plan.
- Time and costs involved in making a Local Plan
- Measures to diversify the market and increase the different types of homes, including custom build
- The relationship between Neighbourhood Plans and a local planning authority’s potential lack of five year housing supply

3.2 Housing and Planning Act 2016

- 3.1 On publication of the then Housing and Planning Bill the Government said it would kick-start a “national crusade to get 1 million homes built by 2020” and transform “generation rent into generation buy.” The supply-side measures in the Bill are primarily focused on speeding up the planning system with the aim of delivering more housing. There is also a clear focus on home ownership, with measures to facilitate the building of Starter Homes and self/custom build housing. The Bill was presented on 13 October 2015 and received Royal Assent on 12 May 2016.
- 3.2 In February 2016 the Government published an *Implementation of planning changes: technical consultation* covering many areas of the Act. The consultation closed on 15 April 2016 and a Government response has not yet been issued.
- 3.3 A number of sections of the Act on planning came into force from the day the Act received Royal Assent:
 - Local Planning authority duty to keep a register of particular kinds of land;
 - Processing of planning applications by alternative providers; and
 - Urban development corporations
- 3.4 In the majority of cases where the sections of the Act grant a power to the Secretary of State to make further regulations, these have not yet been made and are described below.
- 3.5 Starter homes

- 3.5.1 The Act is intended to put into legislation the Government's commitment to provide a number of Starter Homes on sites above a specified size, sold at a discount of at least 20% of the market value, for first-time buyers under the age of 40. The Act puts a general duty on all planning authorities to promote the supply of Starter Homes, and provides a specific duty, which will be determined in later regulations, to require a certain number or proportion of Starter Homes on site.
- 3.5.2 On 23 March 2016 the Government published a *Starter homes regulations: technical consultation* which closed on 27 May 2016. A Government response to the consultation has not yet been issued.
- 3.6 Self-build and custom housebuilding
- 3.6.1 The Act adds to and amends the Self-build and Custom Housebuilding Act 2015, which requires local authorities to keep a register of people seeking to acquire land to build or commission their own home. The Act specifically requires local authorities to grant "sufficient suitable development permission" of serviced plots of land to meet the demand based on this register. Planning Practice Guidance on Self-build and Custom Housebuilding was published by the Government on 1 April 2016.
- 3.7 Neighbourhood Planning
- 3.7.1 The Act introduces measures designed to speed-up and simplify the Neighbourhood Planning system. It gives the Secretary of State powers to set certain time limits for parts of the process of making a neighbourhood development plan or order. It also allows the Secretary of State to intervene in the process if local authorities are not using their Neighbourhood Planning powers within these prescribed limits.
- 3.8 Local Plans
- 3.8.1 With the aim of encouraging more local authorities to have a Local Plan in place, the Act gives the Secretary of State greater powers to intervene in the Local Plan making process. Specifically it would allow the Secretary of State to intervene if a local authority was failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a Local Plan.
- 3.8.2 The Government's February 2016 *Implementation of planning changes: technical consultation* proposes to prioritise Government intervention where:
- there is under delivery of housing in areas of high housing pressure;
 - the least progress in plan-making has been made;
 - plans have not been kept up-to-date;
 - intervention will have the greatest impact in accelerating Local Plan production
- 3.9 Planning "permission in principle" and local registers of land

- 3.9.1 To enable more housing to be built on brownfield land, the Act introduces a new duty for local authorities to keep a register of brownfield land within its area. This would then allow the Secretary of State to grant “planning permission in principle” (PIP) for housing on sites identified in these registers. PIP would then have to be combined with a new “technical details consent” granted by the local authority before development could go ahead.
- 3.9.2 The Government proposed that there should be three “qualifying documents” that would be capable of granting permission in principle. These are: future Local Plans; future Neighbourhood Plans; and brownfield registers. Permission in principle granted from these documents would last for five years. It is also proposed that applicants for minor development should be able to apply for permission in principle on applications. The consultation proposed that the “in principle matters” should relate to the location, the uses and the amount of development on a particular site.
- 3.9.3 In relation to the registers of brownfield land, the consultation proposed that a “key component” of the evidence base for this work would be the local authority’s Strategic Housing Land Availability Assessment process. Sites would be assessed against specific criteria that will be set out in regulations to ensure that they are suitable for housing. The Government expects the register to be updated on an annual basis.
- 3.9.4 The consultation restated the Government’s aim to ensure that 90% of suitable brownfield sites have planning permission for housing by 2020. It also made clear the Government’s intention to introduce measures to ensure that progress is made against this target by local authorities; LPA that have failed to make sufficient progress against the brownfield objective would be unable to claim the existence of an up-to-date five year housing land supply when considering applications for brownfield development, and therefore the NPPF’s presumption in favour of sustainable development would apply.
- 3.9.5 A response to this part of the consultation has not yet been issued.
- 3.10 Designation for poor performance
- 3.10.1 Provisions were introduced in the Growth and Infrastructure Act 2013 to designate poorly performing authorities in terms of speed and quality of decision making on major applications. The Housing and Planning Act will extend the ability to designate in relation to non-major applications. The *Implementation of planning changes: technical consultation* proposed the following threshold ranges for designation in relation to non-major applications:
- speed of decisions: where authorities fail to determine at least 60-70 per cent of applications for non-major development on time, over the two year assessment period, they would be at risk of designation
 - quality of decisions: where authorities have had more than 10-20 per cent of their decisions on applications for non-major development overturned at appeal, they would be at risk of designation

3.11 Financial benefits

- 3.11.1 The Act will require local authorities to produce a report of the financial benefits associated with accepting a planning application. This could, for example, include income from the Community Infrastructure Levy and grants or other financial assistance from Government such as the New Homes Bonus.

3.12 Pilot schemes for competition in processing planning applications

- 3.12.1 The Act will give the Secretary of State the power, by regulations, to introduce pilot schemes for competition in the processing (but not the determining) of applications for planning permission.
- 3.12.2 The *Implementation of planning changes: technical consultation* asked for views on who should be able to compete for the processing of planning applications, which applications they could compete for and on how fee setting in competition test areas should operate. A response to this part of the consultation has not yet been issued.

3.13 Section 106 planning obligations

- 3.13.1 A clause in the Act provides for a dispute resolution process to speed up section 106 negotiations. The process involves the appointment of a person to help resolve outstanding issues in relation to section 106 planning obligations.
- 3.13.2 *Implementation of planning changes: technical consultation* provides further information about how the proposed dispute resolution mechanism would work.
- 3.13.3 This part of the Act also provides the Secretary of State with powers to restrict the enforcement of planning obligations in relation to affordable housing in certain situations; consultation on the use of this power will be forthcoming, which would be introduced through regulations.

3.14 Neighbourhood Planning Bill

- 3.15 The Neighbourhood Planning Bill was published and had its First Reading on 7 September 2016; a second reading in the House of Lords is scheduled for 17 January 2017.

3.16 The two “key aims” of the Bill are to:

- help identify and free up more land to build homes on to give communities as much certainty as possible about where and when development will take place
- speed up the delivery of new homes, in particular by reducing the time it takes to get from planning permission being granted to building work happening on site and new homes being delivered

- 3.17 On neighbourhood planning, the Bill introduces a new procedure to allow neighbourhood plans to be modified. It also deals with the situation of where a new neighbourhood plan is needed, but covering a slightly different geographical area to the previous one. This part of the Bill is also the subject of an open

consultation, *Implementation of Neighbourhood Planning provisions* in the Neighbourhood Planning Bill. The Government issued the response to this consultation in December 2016, and subject to Royal Assent of the Neighbourhood Planning Bill, intend to implement the proposals as set out in the consultation. This also includes a formal review period for the Statement of Community Involvement.

- 3.18 The Bill also provides that pre-commencement planning conditions can only be used by Local Planning authorities where they have the written agreement of the developer. If the developer does not agree to the pre-commencement condition then the local authority has the option to refuse the planning permission. These provisions were the subject of a consultation: Improving the use of planning conditions, a separate report on the agenda of this meeting describes the government response to this consultation.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 This information is presented for information only and there has not been the need for consultation

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no specific equality considerations arising from this report.

4.3 Council policies and City Priorities

- 4.3.1 Housing Growth is one of the breakthrough projects. Measures in the new legislation and further proposals may have a significant impact on the both in terms of housing delivery and in the planning process.

4.4 Resources and value for money

- 4.4.1 There are no specific implications arising from this report.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 There are no specific implications arising from this report.

4.6 Risk Management

- 4.6.1 There are no specific implications arising from this report.

5 Conclusions

- 5.1 It is clear from the last few years, that the government has the reform of the planning system firmly within its sights. The latest round of Bills and Acts further supports the government's aim of simplifying the system and stimulating the economy through supporting development. This is very clear to see in relation to speeding up the delivery of new homes in particular. We are still awaiting the response to the December 2015 consultation on proposed changes to national

planning policy, where the Government proposed a number of changes to the National Planning Policy Framework, to support better the development of housing on certain types of land.

- 5.2 The new thresholds for local planning authorities to meet in relation to speed of decision making and quality of decision making are further evidence of the approach the government is taking to ensure there is an efficient and effective planning system; authorities must continually improve their processing timescales for both major and non-major applications and demonstrate the delivery of high quality decision making.
- 5.3 The forthcoming Housing White Paper is expected to set an overall strategy for building new homes and to boost housing supply. The implications of this will no doubt have an impact on local planning authorities and we await the detail.

6 Recommendations

- 6.1 Members are recommended to note the report.

7 Background documents¹

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.



Report author: Steve Butler
Tel: 0113 2243421

Report of Chief Planning Officer

Report to Joint Plans Panel

Date: 31 January 2017

Subject: Consideration of Two storey Side Extensions to Domestic Properties

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	☐ Yes	☒ No
Are there implications for equality and diversity and cohesion and integration?	☐ Yes	☒ No
Is the decision eligible for Call-In?	☐ Yes	☒ No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	☐ Yes	☒ No

Summary of main issues:

Following the overturn of an officer recommendation to approve an application on a domestic property which included a two storey side extension, Members of South and West Plans Panel requested that a report be presented to Joint Plans Panel advising what had changed in the officers approach to such applications as Members would have expected a recommendation for refusal. This report concludes that there is no change in approach. The application was considered in the light of relevant guidance but the key determining factor was the weight placed upon other material considerations.

Recommendations:

Members of Joint Plans Panel note the content of the report.

1.0 Purpose of this report

- 1.1 This report is brought before Members at the request of South and West Plans Panel. At the South and West Plans Panel on 25th August 2016 the abovementioned application for a part two storey, part single storey side extension and single storey rear extension at 43 Moor Flatts Avenue, Middleton was presented with an officer recommendation for approval.
- 1.2 At the meeting, Members resolved initially to defer the determination of the application and requested officers to carry out further negotiations with the applicant in respect of setting the extension in from the boundary by 1m at both ground and 1st floor. The concern expressed related partly to access to the rear garden for bins, but mainly with regard the dominance and overbearing effect upon the side facing main entrance door to the adjacent bungalow. Members of Plans Panel were concerned that Officers had brought forward a recommendation for approval of a proposal that included a two storey element, which was almost directly on the boundary with the driveway of the adjacent property at ground floor whereas previously a 1m gap had been required. Members of South and West plans Panel requested that a report be presented to Joint Plans Panel advising what had changed in the officers approach to such applications as Members would have expected a recommendation for refusal

2.0 Background Information

- 2.1 At the Plans Panel Members raised concern that there had been a change in approach with regard the consideration of two storey side extensions. Officers had stated during the discussion that the approach had not changed. However, in this case other material considerations needed to be considered. However, as part of this debate a request was made by Cllr P Gruen through the Chair of the Panel that a report be presented to Joint Plans Panel exploring the issue to provide clarity to Plans Panel Members when considering applications for two storey side extensions to domestic properties in the future. Ultimately the Officer recommendation to approve the application was overturned and the application was refused by Panel for the following reason in summary:

‘the proposal is considered to be an overly intrusive form of development which will be significantly detrimental to the living conditions of the occupants of the said dwelling as a result of dominance, overshadowing and loss of light’
- 2.2 The Policy/Guidance for considering such applications adopted by the council has not changed. For completeness a summary of the policy context is provided at appendix A.
- 2.3 The key difference with regard how officers considered the application at Moor Flatts Road, which Members identified as ‘a change in approach’ concerns the consideration and the weight attached to ‘other material considerations’ specific to this site. In particular the interpretation of Guidance provided in the

householder design guide in view of the fall-back position enjoyed by the applicant by virtue of the amendments made to the General Permitted Development Order in 2013 and the outcome of a recent appeal for a proposal at 71 Church Lane, Methley (APP/N4720/D14/2229083) that had similarities to the application at 23 Moor Flatts Road in Middleton. These considerations specific to the site are set out below:

3.0 Main issues

3.1 Householder Design Guide Considerations

- 3.1.1 To help members understanding of the issue, and to clarify why Officers recommended approval of the application, it is worth considering the guidance provided in the Householder Design Guide and how it was interpreted by officers, and the 'fall-back position' with regard Permitted Development as well as the site specific circumstances.
- 3.1.2 In the introduction to the Householder Design Guide the scope and aim of the guidance is made clear. The aim of the guidance is to assist anyone who wishes to extend their home whether or not they require planning permission to do so. It sets out general principles which should be considered when designing an extension as well as giving advice on particular types of extensions and alterations. The guide seeks to achieve good design and protect the amenity of neighbours. Every site is unique and this means that the scope for development may well vary depending upon the surroundings. This document provides guidance on what will usually be acceptable and should not be seen as a rule book which can be applied everywhere. In addition the guide which is adopted as a Supplementary Planning Document within the Leeds Local Development Framework is intended to be used as a working document for Development Management Purposes.
- 3.1.3 With regards Two Storey Side Extensions the Householder Design Guide states that:

‘two storey extensions can easily erode the character of an area as they often take up all or most of the space to the side of a house and bring the building close to its neighbour. In a street of regular, semi-detached dwellings at least a 1m gap should be maintained to the side boundary:
- 3.1.4 The key consideration in the aforementioned paragraph is the reference to ‘regular semi-detached dwellings’. The intention here is to prevent what is described as the creation of a terracing effect if a row of similar dwellings, the character of which is defined by the spaces the driveways create, should all have similar extensions.
- 3.1.5 Members of Plans Panels will have considered applications for two storey side extensions proposed to be built up to the boundary of a property that mirrors its design, where officers were concerned that terracing effect would be created. In such cases officers would recommend refusal of the application.

- 3.1.6 In the case of the Moor Flatts Road proposal the adjacent property was a bungalow. It was considered therefore as it was significantly lower by virtue of its design, an argument could not be sustained that a terracing effect existed in relation to its neighbour because it has a different context to the rest of the row of semi-detached houses on the street by virtue of the significant difference in height.

3.2 Methley Appeal Decision

- 3.2.1 The stance mentioned above had been supported in a recent appeal decision referred to at the Panel. In the appeal decision for a two storey side extension at 71 Church Lane, Methley (APP/N4720/D14/2229083) the proposal had been designed with 0.75m gap between the proposed extension and a neighbouring property (built up to the boundary). Officers had said that this was insufficient and should be increased to 1.0m and a reason for refusal was advanced on this basis. The Inspector noted that the section of the street was characterised by pairs of semi-detached houses arranged regularly along a similar building line with relatively narrow drives creating modest gaps between them (as exists on the majority of the properties on Moor Flatts Road). However, as the appeal property stood at the end of a row semi-detached pairs of houses, beyond which there were 2 detached houses with ridges running at right angles to the road, the Inspector saw this slightly different context with regard to the change in house types as sufficient to conclude that there was break in the street scene that would not lead to a terracing effect. This was in reference to the roof designs not necessarily the 0.75m gap. He went on to say that because of the atypical context of this particular semi-detached dwelling he did not consider that in this particular case there would be serious harm to the street scene and no material conflict with the objectives of the underlying policies and guidance.
- 3.2.2 It was considered that the significant difference in height between the application property and the adjacent bungalow and also that in the case of this application a 2.5m gap is maintained between the properties by virtue of the drive serving the bungalow the proposal at 23 Moor Flatts Drive could also be seen as sufficiently different in context with regard to the change in house types as to conclude that there was a break in the street scene that would not lead to a terracing effect.

3.3 Fall-back Position

- 3.3.1 Another consideration that Members should be aware of is that the Householder Design Guide refers to the requirement for retention of 1.0m to the side boundary for single storey as well as two storey extensions. For ground floor side extensions the guidance states that 'adequate space is maintained to allow access to the rear' but this is caveated by the following 'where this is not possible space should be provided for wheelie bins to the front of the property but these will need to be screened and not obtrusive'. So this also is not an absolute. In addition, a single storey side extension on its own located up to the boundary in most cases is 'permitted development' and therefore can be built without the

submission or consideration of a formal Planning Application. Officers had therefore taken into consideration what could be constructed under the applicants Permitted Development Rights as a legitimate fall-back position. Members should note that for a fall-back position to be given weight there has to be a reasonable expectation that it would be built. In this instance, following discussions with the agent, it was clear that the applicants would be likely to implement their permitted development rights by constructing a single storey element to the side of the property up to the boundary with the adjacent neighbour for the full depth of the property should planning permission for the application before members not be forthcoming. So in view of this it was considered that this factor should be given some weight in the overall appraisal as it was considered a legitimate 'Fall-back Position'.

3.4 Moor Flatts Avenue Appeal Decision

- 3.4.1 Subsequent to the refusal of the application the applicant submitted an appeal against the decision. The Inspectors decision was received on the 19th of January 2017. The appeal was dismissed. Approval granted subject to conditions.
- 3.4.2 The Inspector in his report identified the main issue for consideration to be the effect of the proposed development on the living conditions of the occupiers of 45 Moor Flatts Avenue (adjacent bungalow) with particular regard to any effect of dominance, and/or overshadowing and loss of light (caused by the two story element of the extension). This was consistent with the reason for refusal.
- 3.4.3 The Inspector concluded **however**, the appeal proposal would not give rise to unacceptable effects to the living conditions of the occupiers of 45 Moor Flatts Avenue. In coming to that conclusion the Inspector stated that he had taken into account the comments that there are no two storey extensions in the street. However, he did not find the proposed development to be unacceptable in this regard due to its size, its stepped design and the use of hipped and pitched roofs, nor out of scale with other dwellings in the street.
- 3.4.4 The Inspector also noted that an area for bin storage would be provided to the front of the property. In addition he considered the comments regarding the development of the extension in close proximity to the common boundary and regarding a restrictive covenant and noted the concern regarding the potential damage to the neighbouring property during construction. However, concluded this point that there is no substantive evidence that the appeal proposal would give rise to such damage which would be in any event, covered under separate legal rights.

4.0 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 This report is presented for information and therefore consultation has not been necessary.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 There are no Equality and Diversity / Cohesion and Integration issues.

4.3 Council policies and City Priorities

4.3.1 The effective and expedient determination of planning applications contributes to the overall prosperity of the City and plays a key part in the regeneration and growth agenda.

4.4 Resources and value for money

4.4.1 No identified issues.

4.5 Legal Implications, Access to Information and Call In

4.5.1 No identified issues.

4.6 Risk Management

4.6.1 There are no risks identified in this report.

5.0 Conclusions

5.1 In conclusion nothing has changed in terms of how applications of this type are considered. However, with regard this particular application, officers concluded on balance, in view of the guidance provided by the Householder Design Guide, and the other material considerations which included site specific circumstances, a recent appeal decision for a similar proposal and the legitimate Permitted Development fall-back position, that the application should be recommended for approval. At appeal on this occasion the weight attributed by officers to the 'other material considerations' in the original recommendation for approval was in essence supported by the Inspector.

6.0 Recommendations

6.1 Members are recommended to note the report.

7.0 Background documents¹

¹ ¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

Appendix A

Policy Context

Development Plan

Section 38 of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for Leeds comprises the Adopted Core Strategy (November 2014), saved policies within the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013).

Core Strategy Policies

P10 - Design and Amenity

P12 - Landscape

T1&T2 - Accessibility and transport provision for development.

Relevant Saved UDP Policies

GP5 – General planning considerations

BD5 – General amenity issues.

BD6 requires all alterations and extensions to respect the scale, form, detailing and materials of the original building

Supplementary Design Guide

Neighbourhoods for Living SPG

Householder Design Guide Supplementary Planning Document:

The guide gives advice on how to achieve high quality design for extensions and additions to existing properties, in a sympathetic manner that respects the spatial context. The following policies are relevant to this application.

HDG1: all alterations and extensions to respect the scale, form, proportions and the character and appearance of the main dwelling and the locality. Particular attention should be paid to:

- the roof form and roof line,
- window details,
- architectural features,
- boundary treatments
- materials

HDG2: All development proposals should protect the amenity of neighbours. Proposals which harm the existing residential amenity of neighbours through excessive overshadowing, over-dominance or overlooking will be strongly resisted.

National Planning Policy

The National Planning Policy Framework (NPPF), published on 27th March 2012, and the National Planning Practice Guidance (NPPG), published March 2014, replaces previous Planning Policy Guidance/Statements in setting out the Government's planning policies for England and how these are expected to be applied. One of the key principles at the heart of the Framework is a presumption in favour of Sustainable Development.

The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The policy guidance in Annex 1 to the NPPF is that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

The NPPF must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions. The following parts of the NPPF have been considered in the consideration of this application:

7. Requiring good design.

Appendix B: Original Report to Plans Panel of 22nd September 2016



Leeds
CITY COUNCIL

Originator: Andrew Perkins

Tel: 0113 2478019

Report of the Chief Planning Officer

SOUTH AND WEST PLANS PANEL

Date: 22nd September 2016

Subject: Application 16/01656/FU: Part two storey, part single storey side extension and single storey rear extension at 43 Moor Flatts Avenue, Middleton, LS10 3SS.

APPLICANT

Mrs C Wilby

DATE VALID

14th March 2016

TARGET DATE

26th September 2016

Electoral Wards Affected:

Middleton Park

☒ Yes

Ward Members consulted
referred to in report)

Specific Implications For:

Equality and Diversity

☐

Community Cohesion

☐

Narrowing the Gap

☐

RECOMMENDATION: GRANT PERMISSION subject to the specified conditions:

1. Time Limit on Permission.
2. Plans to be approved.
3. Matching materials
4. Obscure glazing in the first floor side window
5. Retention of boundary treatment
6. The extended drive shall be constructed at the same gradient as existing

1.0 INTRODUCTION:

- 1.1 This planning application was presented at Plans Panel South and West on 25th August 2016 with an officer recommendation for approval.

- 1.2 At the 25th August Panel meeting, Members resolved to defer the determination of the application and requested officers to carry out further negotiations with the applicant in respect of setting the extension in from the boundary by 1m at both ground and 1st floor. The concern expressed related to access to the rear garden for bins, but mainly with regard the dominance and overbearing effect upon the main entrance door to the adjacent bungalow. This door would face directly on to the extension as proposed. At the Plans Panel Members raised concern that there had been a change in approach with regard the consideration of two storey side extensions. Officers had stated that the approach had not changed. However, in this case other material considerations needed to be considered. There was significant amount of debate with regard this issue and Plans Panel requested that the application was to be reported back to Plans Panel for determination.
- 1.3 It is also noted that since the last Plans Panel meeting on 25th August 2016, Cllr Kim Groves has requested to withdraw her objection to the scheme.
- 1.4 Officers have met with the applicant and their planning representative to review the details of the development proposal in light of Members' discussions at the Plans Panel meeting. The applicant has stated that a reduction of 1m set in to the ground floor side extension would not be feasible as it would not provide the desired accommodation at the ground floor. Accordingly the applicant has requested that the application be determined on the basis of the plans presented to the August Panel. The previous report, appropriately updated, is set out below for Members information. The recommendation from officers remains to grant permission subject to specified conditions.
- 1.5 To help members consideration of the application and to clarify why Officers maintain the original recommendation. It is worth considering the guidance provided in the householder design Guide and how it has been interpreted by officers, and the 'fall-back position' with regard Permitted Development.
- 1.6 The Householder Design Guide does state that two storey extensions can easily erode the character of an area as they often take up all or most of the space to the side of a house and bring the building close to its neighbour. In a street of regular, semi-detached dwellings at least a 1m gap should be maintained to the side boundary. The key consideration in the aforementioned paragraph is the reference to 'regular semi-detached dwellings'. The intention here is to prevent what is described as the creation of a terracing effect if a row of similar dwellings, character of which is defined by the spaces the driveways create, should all have similar extensions. In this case the adjacent property is a bungalow. Therefore as it is significantly lower because of its design, it could not be argued that a terracing effect exists in relation to its neighbour because it has a slightly different context to the rest of the row of semi-detached house on the street and is located directly next to a bungalow which creates a variation in the street scene and would not be seen to create any impact in regard to terracing.
- 1.7 This particular stance has been supported in a recent appeal decision referred to at the last Panel in the appeal decision for a two storey side extension at 71 Church Lane, Methley (APP/N4720/D14/2229083). In this case the proposal had

been designed with 0.75m gap between the proposed extension and a neighbouring property (built up to the boundary). Officers had said that this was insufficient and should be increased to 1.0m. The Inspector noted that the section of the street was characterised by pairs of semi-detached houses arranged regularly along a similar building line with relatively narrow drives creating modest gaps between them. However, as the appeal property stood at the end of a row semi-detached pairs of houses, beyond which there were 2 detached houses with ridges running at right angles to the road, he saw this slightly different context with regard to the change in house types as sufficient to conclude that there was break in the street scene that would not lead to a terracing effect. This was in reference to the roof designs not necessarily the 0.75m gap. He went on to say that because of the atypical context of this particular semi-detached dwelling he did not consider that in this particular case there would be serious harm to the street scene and no material conflict with the objectives of the underlying policies and guidance. It should be noted also that in the case of this application a 2.5m gap is maintained between the properties by virtue of the drive serving the bungalow.

- 1.8 Members should also be aware that the Householder design guide does refer to the requirement for retention of 1.0m to the side boundary for both single storey and two storey extensions. For ground floor side extensions the guidance states that 'adequate space is maintained to allow access to the rear' but this is caveated by the following 'where this is not possible space should be provided for wheelie bins to the front of the property but these will need to be screened and not obtrusive'. The guidance relating to setting in by 1m the first floor element is primarily to retain space between buildings of similar design to avoid a terracing effect. Bearing in mind that a single storey side extension on its own located up to the boundary in most cases is 'permitted development' (see paragraph 1.8 below) pragmatic Interpretation of both elements of advice combined with appeal decision has led to applications such as the one before members to day being considered acceptable.
- 1.9 In addition to the aforementioned officers have taken into consideration what could be constructed under the applicants Permitted Development Rights as a legitimate fall-back position. The applicant would be able to construct the single storey element to the side of the property up to the boundary with the adjacent neighbour for the full depth of the property. Therefore presenting a blank wall along the neighbours drive way, facing the neighbour's doorway as proposed by the application with no access to the rear externally at ground floor. The applicant would also be able to construct the single storey rear extension across the full width of the property under their Permitted Development Rights.
- 1.10 Therefore officers have concluded on balance in view of the guidance provided by the Householder Design Guide, site specific circumstances, a recent appeal decision and the Permitted Development fall-back position, that the application be recommended for approval.

2.0 PROPOSAL:

- 2.1 The applicant seeks planning permission for a part two storey, part single storey side extension and single storey rear extension. The proposal will create a TV

room, utility, enlarged open plan kitchen and dining room at ground floor level and the extension will enlarge the existing accommodation at first floor level.

- The ground floor side element will project 2.5m in width and 7.6m in depth
- The first floor side element is set back from the front elevation by 1m and as such will measure 6.7m in depth
- The two storey element will have a hipped roof which measures 5.22m to the eaves and 7.08m to the ridge
- The single storey element will have a hipped roof which measures 2.9m to the eaves and 3.66m to the ridge
- The single storey rear extension will measure 8.5m in width, project 2.69m in depth and have a hipped roof which measures 2.42m eaves height and 3.68m

3.0 SITE AND SURROUNDINGS:

- 3.1 The application site relates to a relatively plain and simple semi-detached, brick built dwelling with concrete tiled hipped roof. The property is set back and set down slightly from the highway with a modest driveway to the side which runs down to meet a single garage. There is a noticeable gradient on the site, as such the rear garden area is on a lower level to that of the host and is accessed via an area of timber decking. The rear garden area has a total length of approximately 12.5m which is bounded by a 1.8m high timber fence and hedging. The host's rear garden joins the rear gardens serving Middleton Park Road.
- 3.2 The area is residential in nature; the dwellings in the immediate streetscene and surrounding area are a mix of semi-detached dwellings and semi-detached bungalows. It is noted that the host dwelling forms part of a pair of two storey dwellings on Moor Flatts Avenue after which, the house type changes to bungalows at the head of the cul de sac. The adjacent neighbouring dwelling at No.45 Moor Flatts Avenue is a bungalow and is located on a slightly higher land level.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 H21/18/81/ - Approved
Addition of car port to side and rear of semi-detached house.

5.0 HISTORY OF NEGOTIATIONS

- 5.1 See section 1.0 above and paragraph 10.2 below.

6.0 PUBLIC/LOCAL RESPONSE:

- 6.1 The application has been advertised by Neighbour Notification Letter. The neighbour notification letters were posted out on 29th March 2016 and 12th May 2016 following receipt of revised plans. The publicity period expired on 19th March 2016. Two letters of objection has been received in relation to the application from

the neighbour at No.45 Cross Flatts Avenue. The first letter relates to the original plans submitted; the neighbour raises concerns regarding;

- The plans submitted do not show the relationship with their property
- Loss of light and overshadowing especially in the kitchen
- Loss of privacy due to the new utility room window looking into kitchen
- Development is out of scale with other properties in the area
- There are no two storey extensions in the streetscene
- Concerns that the extension builds right up to the boundary
- Damage to the neighbours drive and foundations during construction
- Lack of access to rear bin storage area
- Reference to a restrictive covenant relating to the host property

The second letter relates to the revised plans received; the neighbour raises concerns regarding;

- The extension will be 9ft from their kitchen (only entrance door)
- Smaller extension would still obstruct light into the property and cause overshadowing
- Smaller development still out of scale and will harm the character of a small cul de sac
- Remain concerned about damage to their drive and foundations during construction
- Such an imposing extension would impact on their quality of life

6.2 Cllr Paul Truswell, Cllr Judith Blake and Cllr Kim Groves raise concerns that the precedence would be set for the building of such extensions in this street.

6.3 It is noted that the applicant's partner has submitted a letter supporting the application.

7.0 CONSULTATION RESPONSES:

7.1 None

8.0 PLANNING POLICIES:

Development Plan

8.1 Section 38 of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for Leeds comprises the Adopted Core Strategy (November 2014), saved policies within the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013).

Core Strategy Policies

P10 - Design and Amenity

P12 - Landscape
T1&T2 Accessibility and transport provision for development.

Relevant Saved UDP Policies

GP5 – General planning considerations

BD5 – General amenity issues.

BD6 requires all alterations and extensions to respect the scale, form, detailing and materials of the original building

Supplementary Design Guide

Neighbourhoods for Living SPG

Householder Design Guide Supplementary Planning Document:

The guide gives advice on how to achieve high quality design for extensions and additions to existing properties, in a sympathetic manner that respects the spatial context. The following policies are relevant to this application.

HDG1: all alterations and extensions to respect the scale, form, proportions and the character and appearance of the main dwelling and the locality. Particular attention should be paid to:

- i. the roof form and roof line,
- ii. window details,
- iii. architectural features,
- iv. boundary treatments
- v. materials

HDG2: All development proposals should protect the amenity of neighbours. Proposals which harm the existing residential amenity of neighbours through excessive overshadowing, over-dominance or overlooking will be strongly resisted.

National Planning Policy

- 8.3 The National Planning Policy Framework (NPPF), published on 27th March 2012, and the National Planning Practice Guidance (NPPG), published March 2014, replaces previous Planning Policy Guidance/Statements in setting out the Government's planning policies for England and how these are expected to be applied. One of the key principles at the heart of the Framework is a presumption in favour of Sustainable Development.
- 8.4 The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The policy guidance in Annex 1 to the NPPF is that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

- 8.5 The NPPF must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions. The following parts of the NPPF have been considered in the consideration of this application:

7. Requiring good design

9.0 MAIN ISSUES:

- Design and Character
- Fallback Position
- Residential Amenity
- Highway Safety/Accessibility
- Bin Storage
- Representations

10.0 APPRAISAL:

Design & Character

- 10.1 The Leeds Core Strategy includes a number of policies appropriate to design which are relevant. Policy P10 outlines a number of key principles which fall under the wider objective of ensuring new development delivers high quality inclusive design. Saved Unitary Development Plan policy GP5 looks to protect amenity (including visual amenity) and saved UDP policy BD6 aims to ensure that “alterations and extensions should respect the scale, form, detailing and materials of the original building”. The Council’s Householder Design Guide Supplementary Planning Document (SPD) includes a number of policies and detailed guidance for domestic extensions which are relevant to the proposal.
- 10.2 Originally the applicant sought consent for a larger part two storey, part single storey side extension. The original extension included a two storey side extension with a width of 2.5m and depth of just over 7m running along the common boundary shared with the adjacent neighbour at No.45 Moor Flatts Avenue. This amount of solid massing along the boundary was considered unreasonably dominant and building right up to the boundary at two storey level was considered harmful to the character of the host dwelling and could not be supported. As such, amendments were requested in order to provide more relief between the first floor extension and the boundary shared with the adjacent neighbouring dwelling resulting in the first floor element being set in by 1m.
- 10.3 Following receipt of revised plans, the part two storey, part single storey side and rear extension is now considered acceptable in terms of design and character. It is acknowledged that the two storey side extension does add a degree of additional bulk and the adjacent neighbouring bungalow is of smaller scale and form. However, the first floor extension has been reduced in width and is now offset from the common boundary shared with the adjacent neighbour at No.45 Moor Flatts Avenue by 1m. The first floor element of the side extension is set back from the front elevation by 1m, and set down adequately from the main roof ridge. Furthermore the extension will use matching materials, fenestration and detailing. As such, the amended two storey side extension does comply with the guidance

contained within the Householder Design Guide and will be read as a subservient addition. The single storey rear extension is also considered acceptable in terms of design and character. The extension is of modest proportions with a mono-pitched roof. The extension is located to the rear of the property and will replace an existing flat roof extension.

- 10.4 It is acknowledged that the neighbour at No.45 Moor Flatts Avenue has raised concerns regarding the development being out of scale with other properties in the area and that there are no two storey extensions in the immediate streetscene. However, it would be unreasonable to hold a strong objection to the proposal on these grounds as every application is treated on its own merits. There are some examples of side extensions within the surrounding area and in this instance the proposal represents an acceptable addition which sufficiently respects the character of the existing property and wider streetscene and meets the wider aims of Core Strategy policy P10, saved UDP policies GP5 and BD6, HDG1 of the Householder Design Guide SPD, and the guidance contained within the National Planning Policy Framework in these respects.

Fallback Position

- 10.5 It is noted that the applicant does have a permitted development fallback position; the applicant could build a single storey side extension and also a single storey rear extension without the need for planning permission under 'permitted development' provided that the extension does not wrap around the corner of the property. Therefore, a lot of the massing associated with the proposal could be built without the need for planning permission and the principle of a single storey side and rear extension cannot be disputed. The parts that do require permission would therefore be the first floor element, and the link between the corner and the side.
- 10.6 Members should note that for a fall-back position to be given weight there has to be a reasonable expectation that it would be built. In this instance, following discussions with the agent, it is clear that the applicants would be likely to implement their permitted development rights should planning permission for the application before members not be forthcoming. It is considered therefore that this factor should be given some weight in the overall appraisal.

Residential Amenity

- 10.7 Leeds Core Strategy policy P10 aims to protect general and residential amenity. Saved UDP policy GP5 aims to protect amenity including the amenity of future occupants and policy BD5 states:

'All new buildings should be designed with consideration given to both their own amenity and that of their surroundings. This should include usable space, privacy and satisfactory penetration of daylight and sunlight.' Policy GP5 notes that "extensions should protect amenity and this includes the loss of privacy through overlooking, overdominance and overshadowing". The Council's Neighborhood's for Living SPG looks to ensure development proposals provide a good level of amenity for future occupiers. Paragraph 17 of the NPPF requires local planning

authorities to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

- 10.8 With regard to these considerations, the proposal is considered acceptable. The adjacent bungalow at No.45 Moor Flatts Avenue is of a smaller scale and form and it is acknowledged that the occupiers of this property have raised concerns regarding the close proximity of the extension to their kitchen (and only entrance door) and how the plans submitted do not include their property. However, this detail is not required as part of the 'validation criteria' and the spatial relationship between the neighbouring properties is assessed during the officer site visit. As noted above, there is a noticeable gradient between the host property and the adjacent bungalow; as a result the host property is located on a lower level and it is also noted that the bungalow features two windows to this side serving a bathroom and kitchen, it is also noted that the kitchen is served by two windows one to the front and one to the side.
- 10.9 It is acknowledged that the proposal will add a degree of additional bulk and massing. However, this is not considered harmful to neighbouring amenity space as the bulk of the proposal will be located over the hosts existing driveway which runs parallel to the neighbour's driveway rather than their private garden space. The change in land levels and 1m offset from the boundary will help mitigate the additional massing proposed. Therefore, the proposal is not considered harmful in terms of overdominance of neighbouring amenity space.
- 10.10 It is noted that the adjacent neighbour has raised concerns regarding overshadowing and loss of light to principal windows. However, the bulk of the extension will be confined within the hosts western side elevation therefore any additional shadow cast will be limited to later in the day and will fall over the host's front garden area rather than neighbouring windows or amenity space.
- 10.11 With regards to overlooking, the windows in the front elevation will look out in the direction of the highway rather than neighbouring amenity space. The windows in the rear elevation will look out over the hosts own garden area rather than neighbouring private amenity space. The new first floor window opening in the western side elevation will serve a bathroom and could be obscure glazed to prevent any loss of privacy. The ground floor window serving the utility room is a high level window with very limited outlook which would be offered additional screening by the existing boundary treatment. If members are minded to approve the application, a condition should be attached requiring the use of obscure glazing in the first floor side window.
- 10.12 Overall, the proposals are not expected to create a harmful increase in overshadowing of neighbouring private amenity space or principal windows. As such, the application is considered to be acceptable in terms of privacy, loss of light and overshadowing and is considered to be in keeping with the wider aims of UDP policies GP5 and Householder Design Guide policy HDG2.

Highway Safety

- 10.13 The proposal does not prevent two cars from parking off-street on site. Whilst the proposal will build over part of the hosts existing driveway, using the proposed

block plan submitted, the applicant is intending to create a second off street parking space to the front. It should also be noted that the proposed increase in width to the drive way would reduce the length of kerb available for visitor parking directly in front of the property on street. However, the remaining length is still sufficient to park a vehicle without obstructing driveways. As such, the proposal is considered to protect highway safety and is considered to be in keeping with the wider aims of adopted Core Strategy policy T2.

Bin Storage

- 10.14 The proposed extension will involve building over part of the hosts existing driveway and restricting access from the rear of the property to the front. Since the last Panel meeting on 25th August 2016 the agent has provided a revised block plan showing the proposed bin store which would be located in front of the extension and to the side boundary of number 45 Moor Flatts Avenue.

Representations

- 10.15 It is acknowledged that the adjacent neighbour at No.45 Moor Flatts Avenue has objected to both the original and revised plans. All material planning matters raised by way of representation are discussed above. Concerns regarding structural damage to the neighbours driveway and foundations during construction are covered separately by Building Regulations. Comments in relation to a restrictive covenant relating to the host property are a legal matter and should be dealt with outside of the planning process.

11.0 CONCLUSION

- 11.1 The scheme is considered to comply with both National and Local planning policy regarding householder development. The proposal would create additional living accommodation for an existing family dwelling and the development does not lead to harm to neighbouring amenity in terms of outlook, privacy, over-dominance or create any significant highway safety concerns. Amendments have been requested in order to achieve a more sensitive design which is in keeping with the character of the host dwelling and wider streetscene. In addition an additional condition has been added to ensure that the proposed extension to the width of the driveway is constructed to the same gradient as the existing driveway. There are not considered to be any material planning reasons to resist a part two storey, part single storey side extension and single storey rear extension at this property.
- 11.2 Overall, the application is considered acceptable in planning terms and does accord with the aims of the relevant local and national planning policy and as such is recommended for approval subject to conditions.

Background Papers:

Application files 16/01656/FU

Certificate of ownership: signed by applicant



Appeal Decision

Site visit made on 19 December 2016

by Philip Lewis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 January 2017

Appeal Ref: APP/N4720/D/16/3160170

43 Moor Flatts Avenue, Middleton, Leeds LS10 3SS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs C Wilby against the decision of Leeds City Council.
 - The application Ref 16/01656/FU, dated 12 March 2016, was refused by notice dated 23 September 2016.
 - The development proposed was originally described as proposed 2 storey side extension, single storey rear extension, demolition of detached garage to rear garden.
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Decision

1. The appeal is allowed and planning permission is granted for a part two storey, part single storey side extension and single storey rear extension at 43 Moor Flatts Avenue, Middleton, Leeds LS10 3SS in accordance with the terms of the application, Ref 16/01656/FU, dated 12 March 2016, subject to the attached schedule of conditions.

Procedural matter

2. I have taken the description of development from the Council's decision notice for my decision above as it more succinctly describes the development than that set out on the application form.

Main Issue

3. The main issue for the appeal is the effect of the proposed development on the living conditions of the occupiers of 45 Moor Flatts Avenue with particular regard to any effect of dominance, and/or overshadowing and loss of light.

Reasons

4. The appeal relates to 43 Moor Flatts Avenue, which is a two storey, semi-detached dwelling with a hipped roof. To one side of the appeal property is situated 45 Moor Flatts Avenue which is a semi-detached

bungalow. I saw at my site visit that both Nos 43 and 45 are set in from the common boundary which is marked by a close boarded timber fence with the dwellings separated by their respective driveways. I noted at my site visit that a garage at the appeal property has been demolished.

5. The appeal scheme involves side and rear extensions. The side extension would extend out to the site boundary and would be stepped, so that the two storey element which would have a hipped roof would be set back from the site boundary and the front of the dwelling. The rear extension would be single storey with a mono pitched roof.
6. During my site visit I viewed the appeal site from No 45. I observed that the kitchen of No 45 has a window to the front facing the street and a door and window to the side, facing towards the flank wall of the appeal property. The appeal proposal would give rise to a single storey flank wall close to the common boundary with No 45 which would project appreciably to the rear of the dwelling, with the two storey element set back above, which would extend across most of the flank wall of the existing dwelling. Whilst there would be an increase in the mass of the appeal property, due to the setting back of the two storey element and the use of hipped and pitched roofs, the overall mass of the extensions would be broken. Additionally, the driveway of No 45 provides a separation gap between the bungalow and the proposed development. Consequently, I do not consider that the appeal scheme would give rise to dominating effects for the occupiers of no 45.
7. In respect of overshadowing and loss of light, I have taken into consideration the position, size and orientation of Nos 43 and 45, and the position of the windows and door in the flank wall of no 45. I find that there would not be an unacceptable increase in overshadowing as a result of the proposal nor an unacceptable loss of light to the kitchen of No 45, which is also served by the window to the front.
8. The appeal scheme includes two windows in the flank wall, a high level window serving a ground floor utility room and a bathroom window on the first floor. If I were minded to allow the appeal, I could impose a condition requiring the windows to be glazed in obscure glass in order to safeguard privacy of the occupiers of No 45 and of the appeal property.
9. The appeal proposal would not give rise to unacceptable effects to the living conditions of the occupiers of 45 Moor Flatts Avenue and does not conflict with saved Policy GP5 of the Leeds Unitary Development Plan which includes that proposals should seek to avoid loss of amenity. Additionally, the proposal does not conflict with the National Planning Policy Framework which in paragraph 17 includes that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings, or HDG2 of the Leeds Local Development Framework Householder Design Guide Supplementary Planning Document 2012 which is concerned with protecting the amenity of neighbours.

Other matters

10. I have taken into account the comments that there are no two storey extensions in the street. However, I do not find the proposed development to be unacceptable in this regard due to its size, its stepped design and the use of hipped and pitched roofs, nor out of scale with other dwellings in the street.
11. In respect of car parking, I note that the proposal would make provision for two off street parking spaces, and whilst the widened driveway may have an effect on the availability of on-street parking and the character and appearance of the area, I have not been convinced that such effects would be significantly harmful. Additionally, I note that an area for bin storage would be provided to the front of the property.
12. I have considered the comments regarding the development of the extension in close proximity to the common boundary and regarding a restrictive covenant and note the concern regarding damage to the neighbouring property during construction. However, there is not substantive evidence that the appeal proposal would give rise to such damage which would be in any event, covered under separate legal rights.

Conditions

13. I have imposed conditions in respect of timescale and specifying the approved plans as that provides certainty. I have specified a condition that the external surfaces of the extension shall match those used in the existing building in the interests of the character and appearance of the area. I have imposed conditions in respect of obscure glazing for the windows and removing permitted development rights for additional windows in the west elevation of the dwelling in order to safeguard the living conditions of neighbours.

Conclusion

14. For the reasons given above and having considered all matters raised, I conclude that the appeal should be allowed.

Philip Lewis

INSPECTOR

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