

NAME OF COMMITTEE	Overview and Scrutiny
DATE	24 March 2015
REPORT TITLE	Update on the Protocol between Legal and Planning
Report of	Solicitor and Development Manager
WARDS AFFECTED	All

Summary of report: To advise Members of the current practice between Legal Services and Development Management.

Financial implications: There are no financial implications arising directly from this report.

RECOMMENDATIONS:

That the Overview and Scrutiny Committee note the report.

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Development Manager, Malcolm Elliott (Malcolm.Elliott@swdevon.gov.uk)

1. BACKGROUND

1.1 Members requested an update on the current protocol between Development Management and Legal Services following the Council resolution in October 2013 which stated:

- (a) A protocol be put in place to guide working practices between the Legal and Planning Departments;
- (b) Bi-monthly meetings between the Head of Planning, Economy and Community and the Link Lawyer, and monthly meetings between the Development Manager and the Link Lawyer should be recorded/noted;
- (c) In cases where Judicial Review (or other serious litigation proceedings) are contemplated by the Council, or brought against the Council, there needs to be an initial meeting of senior officers and regular face-to-face meetings to ensure that matters are dealt with promptly and all issues fully explored;
- (d) On any occasion where officers feel it necessary to brief Members on a significant issue which has legal, financial or reputational impact, a file note should be made and kept;

- (e) Early consideration should be given by the Head of Planning, Economy and Community to the public interest in these cases, so that the local Ward Member(s) and other key Members are properly informed. Agreement can then be reached on the level of input required of Members;
- (f) Reports presented to Members should include all options and an explanation of the potential impact and merits of each option.”

2. ISSUES FOR CONSIDERATION

- 2.1 The Council wants to ensure that effective working practices are in place to deliver services and provide advice to the Council.
- 2.2 Since October 2013 there has been an established process by which client departments (including planning) access advice from Legal Services. It requires Officers to provide comprehensive instructions on which the solicitors can advise, and establishes a timeframe for advice which can be tracked and properly recorded.
- 2.3 Bi-monthly meetings were set up with the Planning Link lawyer and the Head of Planning, Economy and Community (PEC) at which the needs to both services were explored and prominent cases discussed. Key priorities (in line with the Council resolution) were identified to ensure that Legal Services were properly instructed, responsibility for cases clearly identified as remaining with the Planning Department, and training and expertise was shared. There was a request from the Head of PEC to draft a protocol dealing with planning appeals, improve template s106 Agreements and monitor enforcement cases. All of these progressed as detailed below and meetings with the Head of PEC became less frequent. In their place a fortnightly meeting was diarised with the Planning Department and publicised to all case officers in order that there was a guaranteed time to enable cases to be discussed between relevant officers and legal specialists.
- 2.4 In January 2104 the Lawyers dealing with planning matters, supported by the Development Manager, gave a presentation to Officers at West Devon (followed by separate training to South Hams’ Officers) to explain the processes and ensure that it facilitated the Planning Department in delivering its service effectively. Emphasis was made throughout the presentation of the importance of keeping proper file notes, together with records of internal and external discussions and site visits, and underlining that ownership for planning matters should remain the responsibility of the Planning Department.
- 2.5 Training has been provided at South Hams by an independent private practice solicitor (Mr Graham Gover) on 24 March 2014 concentrating on permitted development rights, enforcement and ‘untidy site’ notices. More recently officers across both departments attended training provided by Mr Gover in Exeter.
- 2.6 A Planning Solicitor has attended, on request, the Planning Officers’ team meetings to improve awareness across both departments and to discuss changes in legislation. Development Management now shares planning appeal decisions affecting each Council as a matter of routine with Legal Services.

Training and an awareness of current case law and Inspectorate decisions is a key part in ensuring that decision making is sound. Further improvements through sharing expertise and keeping up to date are possible, as currently the onus rests with each professional officer on an individual basis. A balance has to be struck bearing in mind the competing demands with case work.

- 2.7 Section 106 Templates have been prepared in collaboration with officers across the Councils, and are to be made publicly available in an effort to speed up the process. Training has recently been provided to Members of South Hams DC on s106 Agreements which was also attended by officers from Devon County Council. It is anticipated that this will be repeated for West Devon Members.
- 2.8 The protocol attached in Appendix A to this report, was prepared in order to ensure that Members and Officers understood the process to be followed in the event that a planning application was refused on grounds contrary to officer advice and an appeal was received. This Protocol was followed at South Hams DC for a planning inquiry in 2014 and, whilst the appeal was allowed, the Ward Members considered that the process was handled better than had previously been the case and that the Members had been kept fully and properly informed throughout and provided with assistance as required.
- 2.9 Since October 2013, there have been two cases of Judicial Review brought against West Devon and these were dealt with by Planning Case Officers supported by Legal Services, and overseen the Executive Director and Senior Officers. Members were kept informed as the cases proceeded and to date the High Court has found in favour of the Council.
- 2.10 The Council is going through a significant period of transition and there have been a number of temporary staff assisting the Council in providing its planning service. The Development Manager recognises the need that all new staff receive sufficient training in the Council's procedures to ensure that there is consistency in decision making. Officers consider that improvements have been made to meet the changes necessary as identified by the Focus Working Group. It is proposed that the Council resolution and the contents of this report are shared with the Community Practice Leads as they take up their posts to ensure improvements continue to be made.

3. LEGAL IMPLICATIONS

- 3.1 There are no legal implications arising from this report.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications arising directly from this report.

5. RISK MANAGEMENT

- 5.1 The Risk Management implications are shown at the end of this report.

6. OTHER CONSIDERATIONS

Corporate priorities engaged:	All
Considerations of equality and human rights:	Considered in specific applications on a case by case basis
Biodiversity considerations:	None
Sustainability considerations:	None
Crime and disorder implications:	None
Background Papers	Council Report October 2013
Appendices	Appendix A: Protocol for Planning appeals

STRATEGIC RISKS TEMPLATE

No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1	Appropriate Protocol between Legal Services and Development Management	Lack of clear processes for effective working practices affect delivery of services and effective decision-making	4	2	8	↔	Have in place clear processes, training and understanding of roles	Community of Practice for Legal Services and Development Manager

