



## **Tandridge District Council**

### **Virtual Planning Committee Review**

#### **July 2021**

#### **1. EXECUTIVE SUMMARY**

- 1.1 Tandridge District Council, working the Planning Advisory Service (PAS), undertook a review of how the Council's Planning Committee has been working and in particular how it has been working since being delivered virtually due to Covid 19 restrictions.
- 1.2 The Committee, held monthly, is a good size for effective decision making with 11 Members and 2 substitutes. The Council has moved relatively quickly (28<sup>th</sup> May 2020) to deliver a virtual Planning Committee in response to the pandemic and everyone considered there had been few technical issues and the Council is able to carry out its business and it should be commended for this.
- 1.3 The public are able to make representations by recording them in advance of the meetings and those making them are provided with good help and support.
- 1.4 The move to the virtual Committee has been effectively executed, the live stream is generally clear and is the same as that held in webcast. There are minor changes that could be made to improve the viewing for those watching. There could also be an improvement in inter officer and Chair communication during the meeting.
- 1.5 Many benefits arising from holding meetings virtually (higher attendance, less apologies, improved public access) are appreciated by the Members of the Committee. Overall the view was that it would be good to get back to the 'Chamber' but several Councillors and officers considered that going forward, a hybrid Committee would be a good idea as they would improve attendance, give access for those with caring responsibilities etc.
- 1.6 Those interviewed generally considered that the Committee made robust and fair decisions and that they debated them well. The Chair is provided with a briefing note that seems to be very useful with all the key players and information on the applications e.g. officer, speakers etc. However, there are several organisational and procedural issues that need to be addressed for either a virtual or 'Chamber' Committee. These include having a much clearer 'call-in' requirement for applications to go to the Committee; an improved clarity of the roles of Ward Councillor and Committee Members during the Committee, improved order of speeches and debate; and removing any perception or reality that Members are predetermined in their views on an application - particularly those that are given on applications that could be overturned at appeal.

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- 1.7 The Councillors need greater clarity in relation to the framework within which they are taking decisions, to advice received by Planning officers from technical consultees; and the roles and responsibilities (Members, officer, consultees etc), including for example, the Committee Member representing the public interest of the District as a whole (and not their ward) and particularly for Ward Councillors, ensuring that there are no perceived conflicts of interest and predetermination. The Planning Solicitor needs to be more proactive with his advice.
- 1.8 It is recommended that the Council make minor presentational changes and greater use of technology to speed up voting and retaining clarity of who votes as recommended in this report.

### **KEY RECOMMENDATIONS**

- R1 Training and discussion in relation to the roles and responsibilities, and the difference, for officers and Members (issues on the quality of input from consultee should be addressed separately).**
- R2 A new standard call-in procedure should be developed to ensure greater clarity and to avoid uncertainty.**
- R3 The structure of the meeting needs to be clearly explained and followed, with a clear appreciation of the Ward Councillor's speech and the Committee's questions and debate to clarify the roles and aid the public's understanding.**
- R4 A more proactive advice role should be taken by the Planning Solicitor to ensure more robust and defensible planning decisions, particularly in relation to appearance of bias, predetermination, case law, material consideration and the Council's case in relation to appeals and court challenge.**
- R5 Training and discussion, with input from the Planning Solicitor, on the approach to overturns and presenting alternative motions and the potential for the perception of predetermination.**
- R6 Review of the planning protocol to ensure probity and robust defensible planning decisions, including the review of the declarations of interest and potential conflict with other roles.**
- R7 Live streaming should show the same view as the Zoom screen with all participants visible to viewers in order to help increase the clarity of the decision-making process for those watching.**
- R8 Introduce an electronic voting system to make better use of time and deliver a more robust decision-making process, particularly as every motion is individually voted upon.**

## **2. INTRODUCTION**

- 2.1 The Planning Advisory Service (PAS) is part of the Local Government Association (LGA). PAS provides high quality help, advice, support and training on planning and service delivery to Councils. Its work follows a 'sector led' improvement approach, whereby local authorities help each other to continuously improve.

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- 2.2 The person appointed by PAS to conduct the review is Gilian Macinnes Bsc MBA MRTPI: Gilian has over 30 years Local Government planning experience, having worked across a wide range of planning related roles including consultant with PAS, as Director of her own consultancy Gilian Macinnes Associates and recently as Head of Planning and Development at Ashford Borough Council.
- 2.3 The scope of the review was discussed with Charlotte Parker, Chief Planning Officer. The review has focused on the operation of the Planning Committee as a virtual meeting, the approach to decision making and identifying any potential areas for improvement.
- 2.4 The Virtual Planning Committees held between October and March were viewed with interviews carried out with key Members of the Development Management Service, the Planning Solicitor, the Head of Legal, Democratic Specialist (Committee Clerk), Councillors on the Committee, Chair of the Planning Policy Committee and a Parish Council clerk. Interviews with other participants including County Highways, applicants, agents and Members of the public were requested but unfortunately none were arranged. All interviews were carried out virtually using Zoom/Teams/Skype and were undertaken predominantly between 26<sup>th</sup> February and 3<sup>rd</sup> March 2021. In addition, a short meeting was arranged with the Planning Solicitor on the 27<sup>th</sup> January 2021 prior to his departure.
- 2.5 All those interviewed have engaged fully with the process and are thanked for providing their honest opinions and feedback.

### **3. GENERAL ARRANGEMENTS**

- 3.1 The Council has a single Planning Committee, which is generally held monthly and there has been good Member attendance at the virtual Committee. To date eight of these have been held virtually. One Committee in January and two in February 2021 have been cancelled. The Council's use of Zoom as a platform to host the Planning Committee has been very successful. Practice sessions were held in advance of the first meeting and Councillors and officers were very complimentary about the support that had been received from Democratic Services Specialist. The only difficulties appear to have arisen in relation to wi-fi and the potential for loss of sound. Members have voting cards should this happen. The meetings are shown through Public-1 microsite (webcast) which the Council used prior to the pandemic and is accessible on the website. The information about the virtual meetings is on the Council website and provided verbally to speakers who record their submissions. In terms of ease of access to the meeting, it could be made easier to access the meeting by putting the 'button' in a more prominent location (e.g. TDC landing page). There are eleven Members of the Committee and this has not had to be changed to accommodate virtual meetings. This is a reasonable number for good decision-making and it is considered to be a manageable number of Committee Members for the purpose of a virtual meeting.
- 3.2 The in-person Committee meetings previously lasted on average 2.5 hours and the virtual meetings are currently the same. The longest virtual meeting viewed was 3 hrs 45 minutes. The Council's scheme of delegation has not been changed and the same number of applications (4-5) go to virtual Committee as done previously. Call in arrangements haven't changed and TDC have a 97% level of delegation.

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- 3.3 There was a range of major and minor applications at all meetings and there is no evidence that the move to a virtual Committee has resulted in delays to the determination of these applications. However, the service is suffering from capacity and staffing issues that are likely to have delayed the determination of some applications.
- 3.4 There is a lack of clarity on the call-in procedure and the recording of the call-in, resulting in conflict between officers and Members and confusion as to whether an item is going to Committee or not. There needs to be a clear, structured and standardised approach where the request is made on a standard form – preferably on-line - that is automatically recorded by the system and/or the request on a standard form is sent to a standard mail box and put on to the file by administration. Call-ins should be clear and not reliant on individual officers to pull them and the reasons for call in from their mailbox. This is particularly important in a situation where there is a rapid turnover of officers.
- 3.5 The Democratic Services Specialist and the Planning officers are based at the Council offices for the meeting (recognising current social distancing requirements) whilst the Committee Chair and the Committee Members and Ward Councillors join the meeting from a remote location. The Council Planning Solicitor and Deputy Monitoring Officer were remote from the meetings. The Head of Legal attended the March meeting as the Planning Solicitors post is currently vacant. The speakers (excluding) the Ward Councillor all record their speech in advance of the session with the Democratic Services Specialist or submit an audio file. Speakers commented that it was less nerve racking than appearing in person on the night and that the Democratic Services Specialist facilitated re-recording if necessary. There was also the benefit of ensuring that the speech was the allotted time and did not run over.

## **4. MANAGEMENT OF THE COMMITTEE**

- 4.1 The Chair and three Vice Chairs all attend virtually. The Chair is provided with a briefing note (script) for the meeting that reminds Committee Councillors that they do not represent their wards; proposes a vote on non-committee Members joining the debate; introduces officers; Councillor conduct reminders; the Planning officer presentation is available on the website through the 'library'; and provides her with programme and 'actors' (officer, speakers etc) for each item. The concept of the briefing note is a very good one and seeks to ensure clarity for those observing. However, the briefing note also provides the possible 'motions' for items where Councillors may seek to overturn the officer recommendation.
- 4.2 There is general agreement between officers and key Members that the virtual Committee does not allow those involved to 'read' the room, removes the awareness of the level of understanding, unhappiness, desire to speak; or for officers to lean over to indicate to the Chair a wish to speak, the need to bring in another officer etc. This is all much more difficult and is generally felt to be a loss to the running of the Committee.
- 4.3 The officer that leads the Planning officer contribution is the Head of Planning, Louise Wesson; supported primarily by the Principal officers Georgina Betts and Laura Field although the Senior Officers and the Tree Officer also present their items when they are on the agenda. The Chief Planning Officer is also in attendance, primarily as an observer.

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- 4.4 The connectivity for Councillors appears to be good without issue in those Committees viewed, although back up voting cards are available should the audio be lost. The Councillors have not been provided with IT devices and the private devices should be monitored to ensure sufficient access is available for all Councillors.
- 4.5 There does not appear to be any significant difficulties with the streaming technology. On one Committee there was a loss of audio on the webcast, but it did not prevent the Committee from hearing one another and being heard. The audio was reinstalled the next day (following a merge of the backup recording).
- 4.6 There are no arranged site visits and the Councillors go and visit the sites themselves. There are potential access and probity issues that result from Councillors seeking to access private property and there needs to be clear protocols and advice for Members to be cautious of making any statements that could predispose their decision during any interaction with applicants or neighbours if visiting sites alone.
- 4.7 The officers prepare and present extensive presentations to provide Councillors with visual information to support their decision making. The streaming and library set up includes a picture of the Chamber in the bottom right corner; this detracts from the ability to view the slides as this obscures part of the slide. It is recommended that this is removed during the presentation. However, the slides are also available for viewing on the Council website during (and after) the Committee – <https://tandridge.moderngov.co.uk/ecSDDisplay.aspx?NAME=SD241&ID=241&RPID=239347>). This is unlikely to overcome the issue for most people as it would require 2 screens to view the Committee being presented and the presentation separately.
- 4.8 Overall everyone viewed the virtual Committee as a success. Many of those interviewed thought it would be useful to continue with hybrid, part Chamber for those that wanted or could attend in person and part virtual for anyone that couldn't or would rather not attend in person. There was a view that some meetings could remain virtual and some in the Chamber. Only a few of those asked either wanted all back to the Chamber or all virtual. Comments were made on the ability for virtual meetings to give greater access to many people and there was recognition that virtual meetings open up both the Committee and the role of Councillor to those that cannot commit to attendance at the Council offices e.g. those with caring responsibilities. However, there was also the view presented that virtual meetings are not accessible to some because they do not own the technology or connectivity to access it, or that they do not understand how to use the technology. There was also a view expressed by some that, particularly with a multi-party Council, there was a loss overall without personal interaction around Committees, in terms of developing an understanding between Councillors and Councillors and officers.
- 4.9 There is a pre-committee (call-over) briefing for the Chair and three Vice Chairs to ensure all political groups are represented to discuss the running order, the cases being presented and anything else needing to be discussed before the meeting.
- 4.10 The constitution has been updated during the Pandemic and part of this was the inclusion of a 'Protocol for Virtual meetings'. <https://tandridge.moderngov.co.uk/Data/Full%20Council/202005071930/Agenda/Item%203%20-%20SO%20changes%20etc.pdf>
- 4.11 In Zoom Councillors all have their names displayed but officers do not. Although introduced by the Chair it would be clearer if all officers had their name displayed (e.g. name plate). There is a tendency during the Committee to address officers or

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Councillors by their first names which appears less 'professional'. It is recommended that a more formal approach is taken.

### **5. TECHNICAL SUPPORT**

- 5.1 As previously stated, the meetings are held using Zoom and are live streamed on Public-I. Members have been supported in their use of Zoom by Democratic Services and practiced in advance of the first virtual Committee. There does not appear to be any fundamental issues and Councillors seemed relaxed in their use of the technology during the Committee. Officers appear to be confident in their use of the technology but are in the Committee Chamber in case there are any difficulties. Contributors, such as the Parish Councils, find the pre-recording less stressful than performing live at Committee. The only technical issue was the loss of audio at one meeting and now Councillors have voting cards in case this should be repeated.
- 5.2 The view on screen is only the person speaking and a view of the Committee Clerk in the Chamber, it would be preferable if all Councillors taking part were visible and officers when speaking to provide a view of their participation. In that way it would be apparent who the Committee are, and they would appear more accountable.
- 5.3 The approach that the Committee takes to voting on overturns is that the Councillors propose the reason for approval or each reason for refusal as motions that are then individually voted on. This has merit in terms of ensuring that the entire Committee is satisfied with each 'reason'. However, a virtual named vote each time is very time consuming. The use of technology to undertake an electronic vote would be particularly helpful in recording the Councillor and the vote very quickly and enabling the Committee to move onto the next motion or item whilst providing clarity and accountability.
- 5.4 A comment, not directly related to the working of the Committee, was made by several Councillors that the IT system was not very good and access to information about applications was extremely hard to get and unreliable.

### **6. PROCESSES AND DECISION MAKING**

- 6.1 The committee reports are generally considered to be the correct length – enough information without being too much to overwhelm Councillors. The Chair is generally clear about those involved, the item and particularly the decision that is made, which is to be commended.
- 6.2 The Chair reminds all Councillors of the approach to planning. What is unusual is that there are no declarations of interest at the beginning of the meeting, particularly as it is understood that there are interests that should be declared. Members of the Committee do not declare whether they are Parish Members or whether they attend or chair Parish Planning Committees which if they have taken part could be perceived as predetermination of items on the TDC Planning Committee.
- 6.3 At the outset of the Committee, from the briefing sheet, the Chair states that all votes will be recorded but where it is apparent how the Committee is leaning, no vote is taken. This should be amended to most votes will be recorded or all votes and then record them all. All votes could be recorded and still be timely if a digital voting system was introduced (see above).

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- 6.4 It is even more important when meetings are held virtually that the meeting is well structured, and the process is made clear to all those involved, including those viewing online. The Chair takes a vote at the beginning of the meeting that facilitates all Ward Councillors to take part in the debate. This is unusual as Ward Councillors would, at most Council's, set out their views in a speech, slightly longer than the objector/supporter time, then step back for the Committee to debate. This approach makes it clear that they are not a decision maker. It is recommended that this approach is taken then there can be no misunderstanding and it will be clear to everyone.
- 6.5 In the meeting generally, Councillors were respectful to each other, to officers and those Members of the public attending. Some of those interviewed considered that it wasn't liked when officers provided their professional view. However, the views of the Committee Members behaviour at the Committee was very different to the view of Members (particularly non-Committee Members) behaviour outside the Committee where many officers felt unsupported and bullied by Members. The majority of those interviewed considered that the decisions the Committee made were well debated, robust and fair. However, comments were made in relation to not listening to or taking into account officers' recommendations and consultees responses. At Committee occasionally there did seem to be a confusion of roles between officer and Members, with Members appearing to take on an officer role by bringing in research, engaging with consultees and referencing other cases, that may or may not have been relevant. It was witnessed during the review that on those occasions the Planning Officers commented that they were irrelevant and therefore they were not a material consideration and so should not be taken into consideration.
- 6.6 It is apparent from the Committee that Members appreciate the potential implications of overturning a recommendation for approval based on technical evidence e.g. County Highways flooding, lighting etc. If the statutory consultee or expert state that a development is acceptable it is unlikely that a refusal will be upheld at appeal. It will not be a defensible decision. The Committee understanding follows the 'Felbridge' appeals, where there were very significant costs awarded against the Council, Members of the Planning Committee now appear to understand the importance of considering the technical consultees responses carefully, and that to challenge these without evidence is unlikely to succeed.
- 6.7 There should be no perception that a Member has a closed mind, bias or of predetermination. It is vital that all Members enter the Committee (virtual or otherwise) with an open mind, willing to hear the views put forward by others and do not make a decision until they have heard the whole debate. If a Committee Member has been part of a decision made at a Parish Council on an application this gives the perception of bias towards that decision and predetermination. In addition, as an informed observer the Member approach to a challenge/overturn to the recommendation is concerning. It is recommended that Members speak to officers about their concerns for a recommended decision, if they feel they may wish to move an alternative recommendation whether that could be robust and defensible with an opportunity to produce relevant wording and links to relevant policies that can then be taken into account in the officers report, officers presentation, speakers information and the debate. The approach taken by some Members gives the impression that they do not have an open mind to the information and advice shared at the Committee before making a decision: in one case that was viewed even where there was clear explanation of why a refusal was not justified, the Member continued to read out a

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prepared 'motions' script they had without endeavouring to amend or drop that motion. At one of the viewed Committee meetings reference was made by a Committee Member that they had been 'given' a proposed motion for an overturn that they brought forward – there was no explanation as to who had given them to the Committee Member, what their status was or why. This gave a perception of an external influence on the Committee. At another meeting a Ward Councillor said "A motion will shortly be proposed" during his address to the Committee at the beginning of the item. This was immediately followed by a Committee Member talking to the item stating that *"If the Ward Councillor has a motion I am happy to propose it"*. These examples give significant concerns that the current approach gives the perception of bias (to the views of the ward Councillor/others) and/or predetermination and should be the subject of training for not just Committee Members. There is also a perception at times that the Committee Members are making decisions based on comments from their residents, as a Ward Councillor would do, and not appearing to make decisions based on the wider consideration of whole of the District in the public interest.

- 6.8 It was noted by many that there was difficulty in the virtual world about communication between the Chair and officers – to make up for the ability to 'lean' to the chair to indicate an issue, a desire to respond or suggest the legal officer comment etc. It was considered more difficult for officers to attract attention when they wish to speak compared with a traditional face to face meeting. There did not appear to be an alternative method of communication other than speaking out. There is no protocol for sending messages during the meeting and the Council have not set up a Whatsapp group for the Chair and staff to pass instructions as has been done by many Councils. The Council may wish to consider what would be the best approach to mitigate this.
- 6.9 There was very little contribution from the Legal Officer/Solicitor, there were several times I would have expected input and advice from the Solicitor to ensure robust, defensible decisions were being made by the Committee e.g. addressing whether a Councillors comments were material planning consideration, addressing the perceived predetermination etc. There were times when the Head of Planning had to ask for the legal officer to comment.

## 7. ACCESSIBILITY

- 7.1 The live stream of the meetings can be accessed via the Council's website. However, it is not immediately apparent and could benefit from a button being put at the top of the Council landing page on Committee day.
- 7.2 There needs to be further consideration of the viewing experience of the public, the blocking of the slide presentation and the inability to see the Committee during the debate - just the speaker - does not provide a good virtual Committee experience. The virtual Planning Committee is a shop window of decision making by the Council and therefore presentation should be reviewed to facilitate a clear view of all presentations and decision makers.
- 7.3 The meetings were considered to improve accessibility by most, the ability for virtual meetings to give greater access to many people and with a recognition that virtual meetings open up both the Committee and the role of Councillor to those that cannot commit to attendance at the Council offices e.g. those with caring responsibilities, jobs where they are unable to be at the Council offices for Committee time. However, there was also the view presented that virtual meetings are not accessible to some because



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they do not own the technology to access them, have good enough connectivity or that they do not understand how to use the technology.

7.4 There were 769 viewings of the Planning Committee over 7 meeting (prior to March 21) since the pandemic started, views for the same period the year before were 971 (both live and archive viewings). This demonstrates that the virtual meetings and recordings were pre-virtual meetings and now in the virtual world providing good access to Planning Committee decision making.

7.5 The recordings of the meetings are divided into each item for ease of access which is very useful.

## **8. RESOURCING**

8.1 There are no additional resource issues for the Council due to the meetings being held virtually as the Council had already invested in Public-I and the contract entered into pre-pandemic. There are no additional costs of holding virtual meetings as TDC had Public-I. If virtual meetings were to continue it would be advisable to review how all Committee Members access the meeting and ensure that the equipment is suitable. There could be future resource implications if Councillors, to effectively participate in virtual meetings, required new or upgraded Council IT equipment.

## **9. OVERALL CONCLUSIONS**

9.1 The meetings have been effectively executed with few problems and the move to virtual meetings has been relatively straight forward. The business of the Committee has continued, and decisions have been made. Many still see the benefit of face to face meetings but with a view that a hybrid or use of occasional virtual meetings would be useful and provide greater access and less apologies. The Council, Committee Members and officers, should be commended for this.

9.2 A new standard call-in procedure should be developed to ensure greater clarity and to avoid uncertainty and conflict between officers and Members. There needs to be a clear, structured and standardised approach where the request is made on a standard form, preferably on-line, that is automatically recorded by the system and/or the request on a standard form is sent to a standard mailbox and put on to the file by administration of officers.

9.3 Those making representations at the meeting are offered excellent support including being contacted in advance of the meeting to record their contribution. This approach could continue if the contributor wished if virtual meetings cease.

9.4 The public have access to the live stream and recordings on the web site and the accessibility of individual items in the recording is good. In addition to the livestream and the recordings, the officer presentation is also available for viewing.

9.5 A basic requirement of a Virtual Planning Committee should be that those observing can view the business of the meeting in the same or similar way as if the meeting were to be face-to-face. The way the meetings are currently streamed does not achieve this. It would be preferable if all those participating (including officers) should be visible at all times, accepting that it is good practice to mute when not speaking. In

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addition, it would be helpful if the whole of the presentation were available to view and not obscured by the Chamber view on the right corner.

- 9.6 The Chair explains the process for enacting the business at the start of the meeting. However, it is particularly important that a clear structure is followed when meetings are held virtually. It is recommended that there is a clear distinction between those making speeches including Ward Councillors and the Committee Members questions, debate and moving of motions. At present, the lines between the Ward Councillor and their role and the Committee Member and their role is blurred. This is exacerbated by the moving of motions that have been handed over to Committee Members – rather than a motion coming from a Committee Member, after listening to all the information and debate presented at Committee as is the case at other Planning Committees. The structure of the meeting needs to be clearly explained and followed, with a clear separation of representations made to the Committee by the public, applicant and particularly the Ward Councillor, and the Committee Members questioning and debate to clarify the decision-making process and the roles of individuals present and aid the public's understanding. The structure of the meeting needs to clearly enact the different roles by providing the Ward Member with a specific time slot to speak ensuring a clear divide to the Committee Members debating and making the decision.
- 9.7 A more proactive advice role should be taken by the Planning Solicitor to ensure more robust and defensible planning decisions, particularly in relation to appearance of bias, predetermination, case law, material consideration and Council's case in relation to appeals and court challenge. The approach the Councillors take to drafting potential motions and then utilising them at Committee should be reviewed to ensure that there is not perception of predetermination, and robust defensible decisions are being made. The Planning Solicitor should input into training and discussion, on the approach to overturns and presenting alternative motions and the potential for the perception of pre-determination. In addition, there needs to be training and discussion with Members in relation to the roles and responsibilities, and the difference, for officers and Members. There should also be an identification of Member specific concerns about the advice officers are receiving from consultees and this should be addressed with those consultees (officers will act on the advice given). These matters should be addressed in a review of the planning protocol to ensure probity and robust defensible planning decisions, including, the review of the declarations of interest and potential conflict with other roles.
- 9.8 When a Committee Member is seeking to overturn the officer recommendation the Committee vote on each reason for refusal as a separate motion. This requires a great deal of voting and the process for voting is cumbersome, therefore, electronic voting should be explored.