

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	20 <sup>th</sup> August 2012
<b>Report of:</b>	Stephen Irvine, Development Management and Building Control Manager
<b>Subject/Title:</b>	Cheshire East Planning Guarantee and Improvements to the Development Management Service
<b>Portfolio Holder:</b>	Councillor Rachel Bailey

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### 1.0 Report Summary

- 1.1 It is proposed to work towards the introduction of a 'Planning Guarantee', designed to ensure that no planning application dealt with in Cheshire East should take longer than one year to reach a decision from validation. This is intended to improve overall planning performance and deal with perceived delays on the part of applicants in the delivery of "Section 106" planning obligation agreements.
- 1.2 This scheme will follow a range of interventions over the past twelve months which have improved planning performance including:
- The introduction of the pre-application advice service in October 2011 has had positive feedback from Members, applicants, developers and agents, has provided a structured approach to engaging with the Council and ensures consistency of service.
  - Improvements to the registration process and weekly monitoring of performance by the Portfolio Holder and Senior Officers has resulted in a major improvement of performance in the front end of the planning process.
  - Major improvements to our Planning Portal and website which have just been launched.
  - All legacy and current Section 106 agreements are now recorded and managed. Project management arrangements are in place across the Council to spend all legacy commitments. A process for local member involvement has been agreed. Arrangements between services to improve communication for new and ongoing cases are being examined and improved.
  - Performance reporting on enforcement action will be reported to Environment Scrutiny every six months. Further improvements are ongoing with links to wider regulatory services.

## **2.0 Decision Requested**

- 2.1 That Cabinet agree to work towards the introduction of a Planning Guarantee scheme on a phased basis from September 2012, subject to agreement with developers at the Council's Development Forum and subject to the points raised in the legal implications below.
- 2.2 That improvements to date and the significant increase in performance is noted.

## **3.0 Reasons for Recommendations**

- 3.1 To improve overall planning performance and ensure Cheshire East is at the forefront of Government policy.
- 3.2 To assist in the process of negotiating and concluding S106 legal agreements and to respond to concerns of developers in dealing with larger schemes which require S106 legal agreements.
- 3.2. To promote the view that Cheshire East is 'open for business' and is seeking to ensure that its processes are as streamlined and effective as possible.
- 3.3. The proposal is in line with current Government thinking around such planning issues.

## **4.0 Wards Affected**

- 4.1 All

## **5.0 Local Ward Members**

- 5.1 All

## **6.0 Policy Implications**

- 6.1 The proposal is line with currently Government planning policy.

## **7.0 Financial Implications (Authorised by the Director of Finance and Business Services)**

- 7.1 There is no cost associated with this proposal for the Council.

## **8.0 Legal Implications (Authorised by the Borough Solicitor)**

- 8.1 Whilst some S106 planning agreements can be and are concluded relatively quickly, others take longer in practice to complete. Reasons for this relate not only to complexity of some matters and finite legal resources available to handle them, but can also include dilatoriness on the part of applicants themselves, as well as the fact that developers, who understandably approach the transaction from a commercial perspective, often very robustly attempt to

negotiate the very least onerous terms possible for themselves, which conflicts with the Council's requirements from a public infrastructure and finance perspective, and which are set out within its planning decisions. This often leads to protracted correspondence and negotiation which takes time. This is frequently perceived as delay on the part of the Council, but this is not always a justified view. Developers may also provide initial drafts, in the mistaken belief that this is likely to produce a swifter conclusion, but these often prove to be unacceptable to the Council as they fail to provide the Council with the necessary safeguards.

- 8.2 It should be noted that the introduction of any deadline for the completion of S106 agreements must also allow for the fact that developers will sometimes seek to delay the completion of agreements simply because from a commercial perspective a speedy completion at the particular time is not desirable for them, since it would trigger the grant of planning permission and the commencement of the deadline for development to be begun. Also, developers will not always be aware (or necessarily agree) that other third parties ought to be included into agreements in order to properly protect the Council's legal interests and future ability to enforce agreements, in addition to which queries on legal title to land can be complex and require careful checking to ensure that no last-minute or otherwise unknown changes to ownership, of which the developer may not have notified the Council, risk rendering agreements ineffective or unenforceable in the future.
- 8.3 Current arrangements to improve the processes and communications between planning and legal services are completely supported, and should serve to decrease the amount of time spent in clarifying initial instructions and subsequent queries as between officers of different disciplines. Template agreements intended to be used as a starting point for most types of obligation have also been developed, and these should assist speed in terms of providing initial drafts. However, as explained above, the process of completing agreements is a two way one, and any time guarantees must build in safeguards to ensure that the Council does not commit itself to unilateral promises which could undermine its ability to enforce planning obligations which have been properly decided, through the planning decision making process.

## **9.0 Risk Management**

- 9.1 If a "blanket" guaranteed timescale for S106 agreements was introduced without regard to the issues outlined in 8.0 above, this would risk committing the Council to completing agreements without the necessary safeguards to ensure future enforcement, if necessary, would be successful. This would be unacceptable because it could result in development taking place without the necessary wider infrastructure or funding being in place.

## **10.0 Background and Options**

### **Background - Planning Reform**

- 10.1 In *The Plan for Growth* government statement, issued alongside the 2011 Budget, the Government announced a programme of measures to simplify and streamline the system for determining planning applications. This reflected wider ambitions to reform the planning system so that it is simpler, swifter and more positive in its outlook and operation. To that end, the government published the *National Planning Policy Framework in March 2012*, central to which is a new '*presumption in favour of sustainable development*' that is aimed to permeate both plan-making and decision-taking.

### **Background – The Planning Service in Cheshire East**

- 10.2 The Planning Service within Cheshire East is high profile and key to delivering corporate objectives relating to growth, development and overall customer satisfaction.
- 10.3 LGR presented major challenges in integrating three separate planning systems into a Cheshire East service and a complete transformation is nearing completion in terms of IT systems / planning processes and upgrading of the website and Planning Portal.
- 10.4 Cheshire East remains one of the busiest planning authorities in the Country and, despite current economic conditions, we are dealing with in excess of 4000 applications per year.
- 10.5 The service has made year-on-year financial savings over the past three years reducing the overall cost to the Council by at least £1m. The Development Service is likely to be in profit in 2012-13.
- 10.6 Planning performance suffered on 2011-12 due to a number of factors including technical problems associated with the transformation programme, financial pressures reducing staff resources and the fact that the team have been dealing with a major backlog of applications and legacy issues inherited from previous authorities.
- 10.7 Recent discussions with Members at Environment Scrutiny and agents and developer at a Developers Forum meeting highlighted a number of positive steps that the Council has taken recently to improve performance and some outstanding issues.
- 10.8 Performance is now above national standards. First quarter figures for 2012-13 reveal the Council's performance to be 63% for majors, 77% for minors and 92% for others. The overall percentage of cases cleared in time was 88%. However, our aspiration is to be a flagship authority for planning services. This paper sets out ongoing improvements and

proposes new measures to increase overall performance and satisfaction.

### **Speeding up planning applications**

- 10.9 As well as making policy simpler and clearer, local authorities were encouraged to make sure that the processes that applicants have to go through, to obtain planning permission, are as streamlined and effective as possible and that decisions are made in good time.
- 10.10 The Government acknowledged that the majority of applications are determined within the statutory periods (13 weeks for major applications, 8 weeks for others) and that less than 5% take more than one year. In Cheshire East, in the last quarter (April-June 2012), the overall percentage of cases cleared in time was 88% (873 applications were determined in time, 119 out of time).
- 10.11 No planning application which did not require a legal agreement took longer than a year in Cheshire East in 2011-12. However, unfortunately a small minority with legal agreements take a considerable time to determine, to the dissatisfaction of developers. This is a fact that was evidenced at both of our recent Developers Forums where it was a significant cause of complaint. It should be noted that the Council is not simply failing to progress these agreements and Section 8.0 above provides comment on the causes of some agreements taking longer to complete than some developers would like.
- 10.12 As part of *The Plan for Growth* statement, the government said that they were considering the introduction of a 'Planning Guarantee', designed to ensure that no planning application should take longer than one year to reach a decision.
- 10.13 Whilst the government are still considering their options on this policy change, Officers consider that this idea is a positive one subject to the issues raised in 8.0. Cabinet approval is therefore sought to work towards the introduction of a Cheshire East Planning Guarantee, in advance of a government imposed one.

### **The Cheshire East Planning Guarantee**

- 10.14 It is proposed that the Cheshire East Planning Guarantee would establish a clear time limit within which an application should be dealt with. We concur with the Government's initial thoughts that the Council should ensure wherever possible that an application should be dealt with by the Council within one year of its receipt in all instances, barring appeals, subject to the comments in 8.0.
- 10.15 Planning appeals cannot be included because their timetables are dealt with by an outside body (the Planning Inspectorate). As such, it is not possible for the Council to deliver on dealing with appeal cases

within one year of receipt of an application as we have no control on the timetable set by them.

- 10.16 The introduction of the Cheshire East Planning Guarantee would not alter the statutory requirements for local authorities to determine planning applications within 8, 13 or 16 weeks depending on the type of case, or the right for applicants to appeal if cases are not determined within those timescales. However, it would establish some limits so that a one-year guarantee could be met.
- 10.17 We envisage that for individual applications, the clock would need to start when a valid application is received by the Council and would stop when the application was determined and a decision notice issued.
- 10.18 The guarantee would need to exclude periods when progress on the application is not in the control of decision takers principally:
- Pre-application discussions,
  - The time between a refusal and any decision by the applicant to appeal.
  - As outlined in 8.0 above
- 10.19 Applications handled via a planning performance agreement would also be excluded, as such agreements already offer more certainty for the applicant about the timescale for determining their application.

### **Consequences of its implementation**

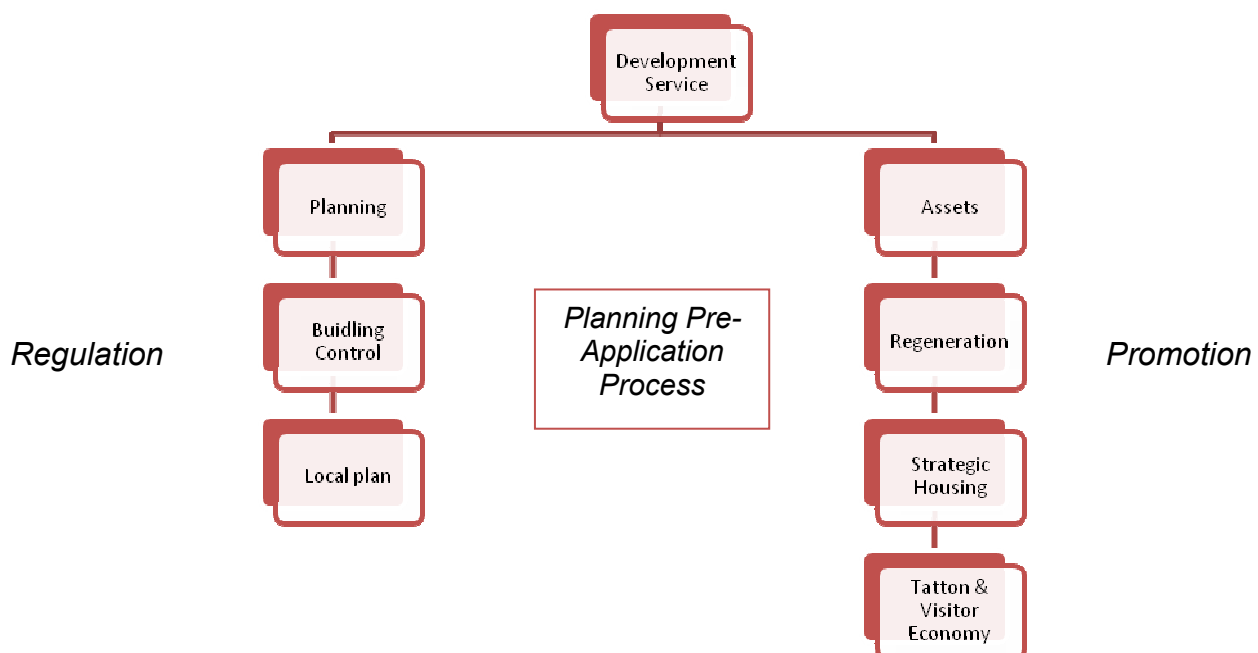
- 10.20 We want to make sure that existing performance levels are improved and sustained, particularly as the economy picks up and the volume of planning applications increases. We also want to ensure that people are able to assess how their Council performs against performance targets, using performance information that is available from us (all Council Planning Departments have to produce performance data every quarter). Working towards the introduction of the guarantee will help in this respect.
- 10.21 However, in order to be a guarantee, it is important that applicants feel that there are consequences where the required timeframe is not met. As part of the introductory process and to provide this confidence and incentivise improvement, the Council will consult its Developers Forum in the autumn on further measures that may be needed to improve the timeliness of decisions and to deal with specific cases where the 12-month Guarantee is not met.
- 10.22 It is anticipated that working towards the implementation of the guarantee will introduce rigour into the process of preparing and completing legal agreements and will subsequently put pressure on staff and developers to deal with them quickly and efficiently. However, such

rigour is already in built in the planning system through its 8, 13 and 16-week national performance targets (all of which the Council reached in the first quarter of 2012). Furthermore, it is unlikely to involve more than 120 cases a year (the maximum number of major applications with legal agreements the Council would expect within one year).

- 10.23 For information, the Council dealt with 4082 applications in 2011-12, of which 113 were major applications.

### ***Pre-application Advice***

- 10.24. The introduction of the Pre-Application Advice service in October 2011 has had positive feedback from Members, applicants, developers and agents. It provides a structured approach to engaging with the Council and ensures consistency of service. The Development Service has clear protocols in place for all internal Planning Applications to undertake formal Pre-Application Advice, and clear lines of accountability to separate the regulatory from promotional development functions.



### ***Registration/Business Support***

- 10.25. Recent improvements to the registration process and weekly monitoring of performance by the Portfolio Holder and senior officers has resulted in a major improvement of performance in the front end of the planning process. A 14-day target for registration has been introduced and the team are consistently meeting this target. A major review of how this part of the service operates will take place during 2012/13 which will look at new models of delivery and ways in which customer access can be improved.

### ***Website/Planning Portal***

- 10.26 Major improvements to our Planning Portal and website have just been launched resulting in a big improvement to customer access and transparency. Work is ongoing to produce protocols for the level of information to be made available publicly through the consultation process – a working group of agents/developers will be involved in drawing up the protocols.

### ***Section 106 Monitoring – legacy monies***

- 10.27 All legacy and current Section 106 agreements are detailed and managed on one spreadsheet and has been reviewed in detail by the Sustainable Communities Scrutiny committee. Project management arrangements are in place across the Council to spend all legacy commitments. A process for local member involvement has also been agreed. The Council will also introduce further improvements to 106 arrangements which will include recovery of costs associated with Monitoring arrangements.

### ***Outstanding Issues & Proposed Solutions***

#### ***Member Engagement / Communication***

- 10.28 There are ongoing improvements to Member and overall communication within the planning service, although longstanding cultural and systemic issues still remain in some areas. The NPPF helps to reinforce the need for ongoing local member input as the focus on localism increased and the predetermination issues are not so prevalent.
- 10.29 It is essential that Members are updated on ward issues and applications that have been called-in and the current systems of self access are being reviewed to ensure a more pro-active approach using IT prompts where possible.

#### ***Highways / Planning Integration***

- 10.30 It is proposed to improve integration between the planning team and highways development management to improve overall planning performance for the Authority.

#### ***Planning Enforcement***

- 10.31 Performance reporting on enforcement action across the Borough will be reported to Environment Scrutiny every six months. Further improvements are ongoing with links to wider regulatory services.

#### ***Legal Agreements***

- 10.32 Perceived delays in the delivery of some legal agreements are causing dissatisfaction for applicants and affecting overall planning performance. Improvements to the instruction process and overall project management within the planning teams, which will need to allow for sufficient time to be allowed for



the negotiation of the agreement after a decision, are being put in place in the immediate term whilst more in depth reviews of the Section 106 process and overall project management arrangements are put in place.

## **11.0 Access to Information**

- 11.1. The background papers relating to this report can be inspected by contacting the report writer:

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