



# Strategy

Overview and Scrutiny Board

## Planning Policy Task Group

**FEBRUARY 2012**

**OVERVIEW & SCRUTINY BOARD**

Supporting Officer: Amanda Scarce



**Bromsgrove**  
District Council

[www.bromsgrove.gov.uk](http://www.bromsgrove.gov.uk)



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## **FOREWORD (BY THE CHAIRMAN)**

One of the most important statutory duties that any council performs is in its role as the Planning Authority. The effectiveness of discharging this duty is measured on the impact on people's everyday lives, wider communities and the environment, as well as development plans of land owners. Whether it is an extension to a residential property or a major development the risks of getting it wrong can be far reaching and costly.

The National Planning Policy Framework directs many of the policies that a Planning Authority builds its local communities upon, whilst the use of planning conditions is a common form of mitigation and planning control. It is for these reasons that the Task Group was set up to investigate the effectiveness of planning conditions and the enforcement of breaches of these conditions.

The role of the Task Group was to look back, using existing case studies, in order to look forward at the effectiveness of planning conditions and the Council's enforcement policy.

Recognising how a service performs, in particular where its strengths and weaknesses are, builds greater confidence in its effectiveness and reputation. Where weaknesses are identified it presents an opportunity to introduce improvements quickly and effectively.

My sincere thanks are extended to the members of the Task Group who have shown a resolve to ensure that the investigations were robust and detailed. The result has been to make recommendations that they believe will improve the wider service delivered to the people of Bromsgrove District.

The willingness and commitment of the Officers should also be recognised in particular for their time and effort in helping the Task Group in its investigations. Their openness and willingness to recognise where services can be improved is appreciated. It is also recognised that where it was agreed that urgent action needed to be taken in some areas this work is already under way.

Finally and importantly, to members of the public who, despite the difficulties they have faced, recognised the scope of the Task Group's investigations in looking back in order to ensure lessons learnt are not ignored.

**Councillor Steve Colella**  
**Chairman of the Planning Policy Task Group**

## **SUMMARY OF RECOMMENDATIONS**

### **1. The Planning Application and Committee Process**

The Task Group recommend:

<b>Recommendation 1</b>	That a mechanism be put in place to ensure that: (a) where conditions cannot be monitored within existing resources, an estimate of the resources required to monitor those conditions be clearly identified; (b) the applicant be made aware at the earliest possible stage of the need to ensure that these conditions are adhered to and properly monitored in line with the conditions applied; and (c) where the planning officer recommends refusal of a planning application and the Planning Committee go against the recommendation, sufficient time should be given within the Planning Committee meeting to discuss conditions.
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Officers are confident that existing resources within the teams can support the new processes to ensure that an estimate of monitoring resources is made together with supporting the applicant to understand and comply with the conditions set.

<b>Recommendation 2</b>	That: (a) a review of the Bromsgrove Standard Planning Conditions be carried out as soon as practicably possible, but within six months of this report being presented to Cabinet; and (b) Planning officer training be formalised to ensure appropriate conditions are identified for routine and non-routine applications.
<b>Financial Implications</b>	£2k - £3k ( estimate) for the condition training
<b>Resource Implications</b>	The review can be undertaken within existing staffing structures.

<b>Recommendation 3</b>	That monitoring groups are not used in the future. However, it is recognised that on occasion there may need to be some form of community engagement for larger more complex planning applications.
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Any support required can be met from existing staffing as it will only be as needed.

## 2. The Planning Enforcement Process

The Task Group recommend:

<b>Recommendation 4</b>	That a detailed review of the Planning Enforcement Policy, which was adopted in April 2011 (as encouraged in Section 8 – Conclusion), be carried out giving particular attention to Sections 4 – Enforcement Procedures (Informal) and 7 – Council’s Commitment to Complainants.
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Review to be undertaken within existing resources.

<b>Recommendation 5</b>	That a case officer be appointed and remain responsible as the point of contact for each enforcement case to ensure continuity and an electronic case file be set up and open to view by colleagues and management.
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Resource can be met within existing staffing structures.

<b>Recommendation 6</b>	That a mechanism be put in place in order for control systems to be developed to ensure enforcement cases are recorded and available upon request to Ward Members.
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Mechanism will be put in place to ensure cases are recorded and made available. This will be delivered within existing resources.

<b>Recommendation 7</b>	That the Planning Committee receives a quarterly report in respect of all new and outstanding planning enforcement cases.
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Reports to be presented on a quarterly basis – no additional resource implications.

<b>Recommendation 8</b>	That through the Transformation programme a review and mapping exercise be carried out in respect of the process post planning application approval stage and that the results of this be shared with the Overview and Scrutiny Board.
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Review to be undertaken within existing resources.



### 3. Internal Audit Ad Hoc Investigation Report: Marlbrook Tip

The Task Group recommend:

<b>Recommendation 9</b>	That the Internal Audit Report recommendations be supported and included within the Overview and Scrutiny Board's Quarterly Recommendation Tracker report to ensure that progress on the implementation is monitored in an appropriate and timely manner.
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Officers will ensure that the recommendations are included in the tracker report and progress monitored regularly.

### 4. Customer Feedback Complaints Process

The Task Group recommend:

<b>Recommendation 10</b>	That a quarterly report be made available to the Overview and Scrutiny Board to enable Members and Officers to be aware of repeat or common themed compliments and complaints (in order to address such complaints).
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Reports to be presented on a quarterly basis – no additional resource implications.

<b>Recommendation 11</b>	<p>That all Heads of Service ensure mechanisms are in place to ensure that when a service request escalates to the extent that there is or could be a critical failure of any nature, they are immediately made aware of the situation and</p> <ul style="list-style-type: none"> <li>(a) that Heads of Service ensure all staff are made aware of and understand the definitions of a complaint; and</li> <li>(b) that the Head of Customer Service provides additional guidance in respect of recording service requests which may also be a valid complaint.</li> </ul>
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Officers will introduce a mechanism to ensure that complaints are reflected, captured and monitored in a timely and accurate way – no additional resource required.

<b>Recommendation 12</b>	<p>That the Head of Customer Service and Human Resources work together to establish a mandatory management training programme to:</p> <ul style="list-style-type: none"> <li>(a) ensure that all managers of the Council are given support to enable them to respond, both verbally and in writing, to all customers in a timely and appropriate manner, with regular reviews of the success of such training carried out; and</li> <li>(b) the Overview and Scrutiny Board receive regular updates to ensure this has been implemented.</li> </ul>
<b>Financial Implications</b>	To be identified within the corporate training budget (cost of training to be established but estimated to be up to £2,500).
<b>Resource Implications</b>	Resource of staff time - formal training to all managers to ensure officers have all the skills required to respond to our customers in a timely and considered manner.

## **BACKGROUND INFORMATION**

An Overview and Scrutiny Topic Proposal Form into the planning process was submitted to the Board meeting held on 13th June 2011 with the request that it be included within the Work Programme of the Board for the coming year. The topic had been put forward by a Member of the Board as it was understood that the vast majority of complaints a Ward Member received from residents were in relation to some part of the planning process. After discussion it was agreed that it would be necessary to break the process down into specific areas of planning and to concentrate on the areas of most concern to both Members and residents in the first instance. It was further agreed that initially, a Board Investigation would be carried out into Planning Enforcement. An initial, informal meeting of the Board took place in July 2011.

At a subsequent meeting of the Overview and Scrutiny Board held on 27th September 2011 a further Topic Proposal Form (completed on behalf of the full Council) was received as a result of a number of planning failures being brought to the Council's attention, this included concerns which had been raised in respect of the Former Landfill Site, Alvechurch Highway, Lydiate Ash (more commonly known as Marlbrook Tip). It was agreed by the Board that a Task Group would be established to scrutinise matters relating to planning policy. As there was significant interest from Members on this particular issue it was also agreed that a special meeting of the Overview and Scrutiny Board would be held on 12th October 2011 in order to appoint a Chairman of the Task Group and to agree membership.

Following discussions at the Board meeting held on 21st November 2011 it was further agreed that the work of the Board Investigation in to Planning Enforcement would be amalgamated within the scope of the Planning Policy Task Group.

## **MEMBERSHIP OF THE TASK GROUP**

Membership of the Task Group was confirmed at the Overview and Scrutiny Board meeting held on 12th October 2011 and included the following Councillors:

S. R. Colella (Chairman)  
Mrs. R. L. Dent  
S J. Dudley  
Mrs. J. M. L. A. Griffiths  
Mrs. C. J. Spencer  
L. J. Turner

The Task Group wishes to acknowledge the assistance received from the Head of Legal, Equalities and Democratic Services and the Head of Planning and Regeneration and her team, who have assisted the Task Group from the start of the investigation, through to the end of the investigation when this report was finalised.

## **INTRODUCTION**

The aim of the Task Group was to review the Council's planning process, in particular the setting and enforcement of conditions, in order to identify strengths and weaknesses and to make recommendations for improvement where deemed necessary.

### **Public Involvement**

Residents from within the vicinity of the Former Landfill Site, Alvechurch Highway, Lydiate Ash were invited to attend a Task Group meeting as part of the evidence gathering process.

### **Witnesses**

The Planning Policy Task Group worked closely with the Head of Planning and Regeneration, the following officers provided information on specific areas: The Development Control Manager (Operations), Planning Enforcement Officer, Customer First Officer and the Lead Auditor.

A full list of witness is provided at **Appendix 2** of this report.

### **Research**

A full list of the documentation and written evidence used in compiling this report is provided in the Bibliography at **Appendix 3**.

### **Areas Covered**

There were a total of ten Task Group meetings. During the first meeting a schedule of work was discussed and the scoping checklist considered, with the following areas of investigation being agreed:

- The planning process and the setting of specific conditions for planning applications and the role of the Planning Committee.
- Gaining an understanding of why conditions are set.
- The effectiveness of conditions and how the Council enforced such conditions.
- How the process could be improved.

The full terms of reference are attached at **Appendix 1**.

## **CHAPTER 1 PLANNING APPLICATION AND COMMITTEE PROCESS**

At the initial meeting of the Task Group held on 1st November 2011, Members discussed the terms of reference and agreed it was important that they received basic background information in order to gain an understanding of the planning process (and the setting and enforcement of planning conditions), and to a lesser extent, the role of the Planning Committee. The Task Group subsequently received a presentation from the Head of Planning and Regeneration at a meeting held on 18th November 2011 which covered the following areas:

- The Planning Process (including Permitted Developments, Type of Planning Permission, Processing Applications)
- The Decision (approvals and refusals)
- Planning Conditions (what they were and what they covered)
- Enforcement of Conditions (what sort of thing does planning enforcement control, formal action to enforce)
- Retrospective Planning (what it is and when it is used)

The Task Group was provided with Circular 11/95 Use of Conditions in Planning Permission which is the definitive document used nationally by planners in setting conditions. It clearly sets out the criteria for the validity of planning conditions and the tests which need to be satisfied before applying those conditions. Conditions should be necessary, relevant to planning, relevant to the development to be permitted and “*enforceable, precise and reasonable*” in all other aspects. It was noted by Members that Circular 11/95 also states that “*in considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed.*” Members also noted the circular stated that “*the sensitive use of conditions can improve development control and enhance confidence.*”

Circular 11/95 sets out in detail the use of planning conditions and refers to the compilation by local authorities of lists of model conditions and how these can improve the consistency of decisions. However, it also stresses that those standard conditions needed to be treated with caution as the need for conditions should be carefully assessed and not used as a matter of routine. It was also confirmed that these local conditions should be regularly updated as the national approach to planning changes overtime. This exercise could be achieved by comparing conditions with other authorities and looking at appeal decisions which often gave an idea of what conditions should be in place. Members were therefore also provided with a copy of the Bromsgrove Standard Conditions. Both documents were discussed in some detail at a later meeting held with the Development Control Manager (Operations).

Members noted that Circular 11/95 also made clear reference to taking extreme care before imposing unreasonable and numerous conditions in order to allow an application to be granted. It was clarified by the Development Control Manager (Operations) that allowing an application with an unreasonable amount of and detailed planning conditions to make the

application permissible was unacceptable and could be reason enough for it to be refused.

The Task Group was informed that the setting of conditions was delegated to the planning officers and where an application was submitted to the Planning Committee details of the conditions would be included within the report albeit in a coded format, but with a simple explanation provided for the Planning Committee Members. Members were informed that should an officer recommendation be overturned by the Planning Committee, then the Committee must spend time making it clear how the decision had been reached and setting any conditions deemed appropriate. Guidance would be provided in respect of this by the Development Control Manager (Operations) at the meeting where necessary.

Members showed particular interest in the area of Planning Conditions and Enforcement (Enforcement is covered in detail in Chapter 2 of this report), as it had been brought to their attention that concerns had been raised with regards to a specific application where conditions had been applied, but it was understood these had been breached and no enforcement action taken. The Task Group therefore requested further information on this specific application – the former Landfill Site, Alvechurch Highway, Lydiate Ash, (more commonly known as Marlbrook Tip). This application had received a great deal of publicity, much of which had been negative for the Council, over a number of years.

The Task Group received copies of the planning application for this site which had been submitted to the Planning Committee together with the Minutes of the relevant meeting and the subsequent decision notice which had been issued. This decision notice had some 24 conditions attached to it.

The Task Group considered written evidence from residents within the vicinity of this site, and which had also been considered in the preparation of the Internal Audit Report (see Chapter 3 of this report). From the correspondence it was apparent that those residents had raised concerns on numerous occasions in respect of the Planning Conditions being breached by the developer of the site. More recently and following the results of the A D Horner Ltd report into over tipping at the site, a public meeting had been arranged by the Council, which the Chief Executive and senior officers attended, in order to provide residents with the following:

- Some useful background information
- Provide information on the handling of the matter
- Respond to concerns and issues
- Discuss future action with regard to the site
- Ensure public involvement and communication.

The Chairman of the Task Group had also attended the public meeting and following feedback he had provided, Members of the Task Group agreed that in order to get a better understanding of how the process had impacted on those residents in the vicinity, a number of them should be invited to attend a meeting of the Task Group in order for Members to hear, first hand, how those

residents had been affected by the site over a number of years. This meeting took place on 11th January 2012. Prior to this meeting, Members of the Task Group undertook a site visit in order to familiarise themselves with the Marlbrook Tip site and in order to be able to gain a better understanding of how the residents living in close proximity to the site could have been affected. This took place on 5th January 2012 when Members were shown the surrounding areas of the site, where residents lived and inspected the site itself.

Some of the issues raised and discussed at the meeting with the residents are detailed in Chapter 4 of this report. However the overwhelming view of the residents was that despite numerous letters, emails and telephone calls to the Council over a number of years, they had not been listened to and their concerns had not been taken seriously. Reference was made to the role of the Marlbrook Tip Monitoring Group by residents, which Members understood was a condition agreed following the submission of the planning application and set out in the minutes of the Planning Committee meeting dated 7th November 2005.

The Task Group have been unable to find terms of reference or details of how the membership of this monitoring group was agreed. The details in the Planning Committee Minutes simply state *"the developer shall participate in a monitoring group that shall meet at least every two months and shall compromise representatives of the developer, the Parish Council, the highway authority, the Bromsgrove District Council and the Ward Councillors. The Group will receive progress reports and resolve site and access problems."*

Members noted that although officers from the Council had attended and facilitated meetings of the Monitoring Group, it was clear from the discussions with the residents and the notes of the meetings available to the Task Group Members that the residents and members of the group's understanding of the role it played were not clearly defined, and although residents believed that concerns raised at these meetings were being feedback to senior officers at the Council, this had not been the case. From the evidence received it was clear to the Task Group Members that the role of the Monitoring Group, albeit set up with the best intentions, had not been successful and had not been set up in an appropriate manner in order to ensure that information and concerns raised would be fed back to the relevant officers.

Members also asked for details of a more current planning application which had a number of conditions attached to it in order to have some form of comparison. The Development Control Manager (Operations) provided Members with similar information for the application at Longbridge East and Part River Arrow, Groveley Lane, Cofton Hackett, which also had 24 conditions attached to it and involved remediation work at the site.

It was immediately clear to Members when comparing the 2 applications that the more recent one contained much more detail in the conditions and referenced, on a number of crucial occasions, to specific plan references. Reasons for setting the conditions were also given in more detail and were set out in a much clearer detailed format. During the discussions with the Development Control Manager (Operations) it was explained that on this



occasion the Council have worked closely with the developer from the earliest stages of the application, for example topographical surveys (funded by the developer) have been undertaken and will continue throughout the stages of the application in order to ensure that the conditions have been adhered to. The plans for the development will be submitted in stages and it would therefore not be in the developer's interests to not comply with the conditions as the stages of the development are dependent upon each other. A time limit had also been set for completion of the "tipping" and the developer must give prior notice of the start date of that work to the Council. Members were appreciative that there was always an element of trust in such circumstances but agreed that from the evidence received, in this case the Council had ensured that a lot more tighter controls were in place than had previously been the case with the Marlbrook Tip application.

From the evidence received the Task Group was able to gain a good understanding of the setting of conditions and the enforcement process (Chapter 2 of this report provides full details of the enforcement process) in respect of 'everyday' planning applications and agreed that this approach had effectively provided Members with a "third" case study.

The Task Group Members therefore recommend the following:

<p><b><u>Recommendation 1</u></b></p> <p>That a mechanism be put in place to ensure that:</p> <ul style="list-style-type: none"> <li>(a) where conditions cannot be monitored within existing resources, an estimate of the resources required to monitor those conditions be clearly identified;</li> <li>(b) the applicant be made aware at the earliest possible stage of the need to ensure that these conditions are adhered to and properly monitored in line with the conditions applied; and</li> <li>(c) where the planning officer recommends refusal of a planning application and the Planning Committee go against the recommendation, sufficient time should be given within the Planning Committee meeting to discuss conditions.</li> </ul>	
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Officers are confident that existing resources within the teams can support the new processes to ensure that an estimate of monitoring resources is made together with supporting the applicant to understand and comply with the conditions set.

### **Recommendation 2**

That:

- (a) a review of the Bromsgrove Standard Planning Conditions be carried out as soon as practicably possible, but within six months of this report being presented to Cabinet; and
- (b) Planning officer training be formalised to ensure appropriate conditions are identified for routine and non-routine applications.

<b>Financial Implications</b>	£2k - £3k ( estimate) for the condition training
<b>Resource Implications</b>	The review can be undertaken within existing staffing structures.

### **Recommendation 3**

That monitoring groups are not used in the future. However, it is recognised that on occasion there may need to be some form of community engagement for larger more complex planning applications.

<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Any support required can be met from existing staffing as it will only be as needed.

## **CHAPTER 2 – PLANNING ENFORCEMENT PROCESS**

Task Group Members were provided with a copy of the Planning Enforcement Policy which had been considered by the Planning Committee on 28th March 2011 and adopted at Council on 20th April 2011. The Policy was effectively a customer charter for the planning enforcement service, giving details of legislation and the Council's commitment to complainants, including timescales for responding to complaints.

The aims and objectives of the Enforcement Policy are:

- To set out realistic achievable objectives on planning enforcement
- To define the range of options available to achieve objectives, having regard to statutory and non-statutory advice from Government.
- To provide a clear and accountable audit trail of decision-making processes
- To adhere to and implement best practice in terms of planning enforcement
- To remedy undesirable effects of unauthorised development
- To bring unauthorised activity under control to ensure the credibility of the planning system is not undermined.

Members were also provided with notes from an informal meeting which a number of Members of the Overview and Scrutiny Board had attended with the Head of Planning and Regeneration. At this meeting the Head of Planning and Regeneration had provided Members with details of the number of outstanding planning enforcement cases and discussed the Planning Enforcement Policy. The Task Group noted that the main areas of discussion covered at that meeting were the number of outstanding complaints, a system of prioritising current and future cases and staffing resources. It was explained to Members that the enforcement process was complex and multidirectional, with various routes a case could follow, to demonstrate this Members were provided with a flow diagram, which gave an overview of the system. The Task Group was informed that in some cases enforcement was discretionary and the decision not "set in stone", consideration had to be given as to what was in the public interest. When the Planning Enforcement Team was advised of a possible breach, negotiations would take place to see whether enforcement could be achievable and realistic – in some cases it is not always appropriate for the Council to carry enforcement through.

During the meeting with residents (referred to in detail in Chapters 1 and 4 of this report) reference was made on numerous occasions to what they felt had been a lack of response and support from the Enforcement Team. Examples of this were made in respect of requests for copies of the outstanding reports from Faber Maunsell Ltd (appointed by the developer of the Marlbrook Tip site). These reports collated the information, which had been provided to them by the developer, in respect of the number of vehicles making deposits at the site and the weight of the loads carried. The reports formed a crucial part of monitoring specific elements of the planning conditions which had been set. The written evidence the Task Group had examined supported the

concerns raised by residents and the inconsistent responses they had received from officers. It was also noted by Members that numerous officers had dealt with the concerns raised and that there did not appear to have been one single point of contact. Members agreed that it was likely that this had lead to officers not being aware of the number of residents that were contacting the Council with the same (or similar) concerns in respect of the site. If there had been one point of contact those concerns may well have been picked up at a much earlier stage. The Task Group discussed the provision of regular updates for Enforcement cases within each Ward, to enable Members to monitor any concerns and to ensure appropriate action that was being taken.

The Task Group questioned the Head of Planning and Regeneration on the points raised by residents; it was conceded that mistakes and errors of judgment had been made by officers, which together with staffing issues at that crucial time had exacerbated the situation. It was confirmed to Members that Planning Enforcement is re-active as opposed to being proactive in actions taken. The resources were not available to monitor the implementation of conditions; therefore only those breaches which were reported were actually, if it was deemed appropriate, enforced. The responsibility ultimately lies with the applicant to adhere to the conditions detailed within the decision notice. Members noted that the Head of Planning and Regeneration was not in post at the time the initial concerns in respect of the Marlbrook Tip application were raised.

The Head of Planning and Regeneration discussed with Members measures which had been put in place to ensure similar mistakes did not happen again. These included training of staff on the IT software (in order for it to be used to its full potential) by the Planning Enforcement Team and more detailed questions to be asked at the first stage of the process. Members received further evidence from the Development Control Manager (Operations) in respect of Planning Enforcement to support the view that lessons had already been learnt and although it was conceded that it was still “early days” improvements had been made within Planning Enforcement, including the logging of all service requests, holding weekly meetings with the Senior Enforcement Officer in respect of new and ongoing cases and a monthly meeting held to review all outstanding cases individually.

The Task Group Members therefore recommend the following:

<b><u>Recommendation 4</u></b>	
That a detailed review of the Planning Enforcement Policy, which was adopted in April 2011 (as encouraged in Section 8 – Conclusion), be carried out giving particular attention to Sections 4 – Enforcement Procedures (Informal) and 7 – Council’s Commitment to Complainants.	
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Review to be undertaken within existing resources.

**Recommendation 5**

That a case officer be appointed and remain responsible as the point of contact for each enforcement case to ensure continuity and an electronic case file be set up and open to view by colleagues and management.

**Financial Implications**

N/A

**Resource Implications**

Resource can be met within existing staffing structures.

**Recommendation 6**

That a mechanism be put in place in order for control systems to be developed to ensure enforcement cases are recorded and available upon request to Ward Members.

**Financial Implications**

N/A

**Resource Implications**

Mechanism will be put in place to ensure cases are recorded and made available. This will be delivered within existing resources.

**Recommendation 7**

That the Planning Committee receives a quarterly report in respect of all new and outstanding planning enforcement cases.

**Financial Implications**

N/A

**Resource Implications**

Reports to be presented on a quarterly basis – no additional resource implications.

**Recommendation 8**

That through the Transformation programme a review and mapping exercise be carried out in respect of the process post planning application approval stage and that the results of this be shared with the Overview and Scrutiny Board.

**Financial Implications**

N/A

**Resource Implications**

Review to be undertaken within existing resources

### **CHAPTER 3 – INTERNAL AUDIT REPORT AD HOC INVESTIGATION: MARLBROOK TIP**

The Marlbrook Tip planning application had been used as a case study for the Task Group and after receiving evidence from residents who lived in close proximity to that site (see Chapter 4 for further details), the Task Group agreed it was important that, as part of its investigation, they also examined the Internal Audit Report, which had been requested by the Head of Planning and Regeneration following the results of the findings of the A D Horner Ltd report.

As part of the Task Group's evidence gathering process the author of the report, the Lead Internal Auditor, attended a meeting to discuss the findings of the report. The Task Group also inspected the correspondence from residents referred to in the Internal Audit Report. Following discussions at that meeting, the Task Group Members agreed that from its own investigations and the evidence they had received, the recommendations in the Internal Audit Report were appropriate and should be implemented within the timescales given.

It should be noted that some of the Task Group's own recommendations duplicate or complement those in the Internal Audit Report. Members agreed that the issues raised in the Report were of such importance that this was a necessary and important duplication.

To ensure that the recommendations from the Internal Audit Report are carried through Task Group Members therefore recommend the following:

<b><u>Recommendation 9</u></b>	
That the Internal Audit Report recommendations be supported and included within the Overview and Scrutiny Board's Quarterly Recommendation Tracker report to ensure that progress on the implementation is monitored in an appropriate and timely manner.	
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Officers will ensure that the recommendations are included in the tracker report and progress monitored regularly.

## **CHAPTER 4 – CUSTOMER FEEDBACK COMPLAINTS PROCESS**

As previously detailed in this report, the Former Landfill Site, Alvechurch Highway, Lydiate Ash (Marlbrook Tip) planning application has been a contentious issue for all concerned. Members therefore agreed that it was appropriate when using it as a case study and after studying the correspondence that had been received over a number of years from residents, to invite a selection of those residents to attend a meeting of the Task Group. From the 8 residents invited 5 attended, together with the Councillor for Marlbrook Ward.

The following areas were discussed in detail at the meeting which was held on 11th January 2012:

- The effectiveness of the planning process and conditions in this case (see Chapter 1)
- The effectiveness of the monitoring group (see Chapter 1)
- The effectiveness of communications between all concerned
- The effectiveness of the Council's Complaints procedure and responses received from officers.

Following this meeting and discussions in respect of the correspondence examined, Members agreed it was important to receive background information on the Council's current Complaints procedure. The Customer First Officer was therefore invited to attend the Task Group meeting on 23rd January 2012, Members were also provided with copies of the relevant procedures, which were available to all staff.

The Customer First Officer informed Members that the current system had only been in place since 2008 and gave details of the various ways in which the iCase system could be adapted to suit the needs of the Council. It was noted that, currently, initial notifications in respect of planning enforcement were not recorded on this system as they were classed as "service requested". It became apparent to Members that this was an area which needed clarification in order to minimize the possibility of service requests escalating into complaints which were not captured on the system and therefore not monitored or responded to in the appropriate manner.

The Task Group acknowledged that the iCase system was not in place when the initial correspondence had been received from residents, however from the evidence they examined more recent correspondence had been received (since the inception of the iCase system). This correspondence had been dealt with again as service requests when it may have been more appropriate to have been recorded through the iCase system. If this had been the case, the issues raised would have been brought to the attention of the Head of Planning and Regeneration at an earlier stage.

The Internal Audit Report provided a breakdown of the correspondence received and the number of complaints in respect of the Marlbrook Tip site that had been handled through the Customer Feedback Complaints

procedure; this was a total of 9 complaints. There was a large number of letters and emails that had been received from residents and in some case correspondence from the local MP who had written in on behalf of residents.

When examining the written correspondence (both letters and emails) Members were concerned at both the time taken to respond and the tone (in some cases) of those responses, both of which were inappropriate and not acceptable. Members agreed that the situation which has now arisen could only have been exacerbated by the responses residents had received from officers of the Council. From the discussions held with residents at the meeting on 11th January 2012 it was apparent that the lack of a co-ordinated and timely response had led the residents to feel that the Council was not listening to or taking their concerns seriously. It was however, conceded by residents that since the appointment of a new Head of Planning and Regeneration in May 2010 their concerns had been responded to and they had been given an opportunity to discuss these in more detail, although they continued to be disappointed in so far as the issues raised had not yet been resolved. Residents also welcomed the use of public meetings as a forum for sharing information.

It became apparent from the evidence gathering process that not all officers were familiar with the iCase system and the process of recording service requests (these are not recorded on iCase, but are core business for which there are other systems in use), complaints and responding to residents in an appropriate and timely manner. Although evidence was only examined from the Planning Enforcement area Members agreed that to ensure a consistent approach was being taken throughout the Council any recommendations made should apply to all areas of the Council.

Following discussions with residents and from personal experiences the Task Group recognised that a measure of performance for any organisation was the number, content and manner of complaints or expressions of dissatisfaction received from its customers. Without this knowledge the organisation would be obviously unaware of the view its customers had of its services. In an open market economy the customer is king and has a choice. Whilst Council services are monopolistic, efficiency, value for money, reputation and confidence are major factors in the service delivery.

Taking into account the evidence provided, the Task Group therefore recommend the following:

<b><u>Recommendation 10</u></b>	
That a quarterly report be made available to the Overview and Scrutiny Board to enable Members and Officers to be aware of repeat or common themed compliments and complaints (in order to address such complaints).	
<b>Financial Implications</b>	N/A
<b>Resource Implications</b>	Reports to be presented on a quarterly basis – no additional resource implications.



**Recommendation 11**

That all Heads of Service ensure mechanisms are in place to ensure that when a service request escalates to the extent that there is or could be a critical failure of any nature, they are immediately made aware of the situation and

- (a) that Heads of Service ensure all staff are made aware of and understand the definitions of a complaint; and
- (b) that the Head of Customer Service provides additional guidance in respect of recording service requests which may also be a valid complaint.

**Financial Implications**

N/A

**Resource Implications**

Officers will introduce a mechanism to ensure that complaints are reflected, captured and monitored in a timely and accurate way – no additional resource required.

**Recommendation 12**

That the Head of Customer Service and Human Resources work together to establish a mandatory management training programme to:

- (a) ensure that all managers of the Council are given support to enable them to respond, both verbally and in writing, to all customers in a timely and appropriate manner, with regular reviews of the success of such training carried out; and
- (b) the Overview and Scrutiny Board receive regular updates to ensure this has been implemented.

**Financial Implications**

To be identified within the corporate training budget (cost of training to be established but estimated to be up to £2,500).

**Resource Implications**

Resource of staff time - formal training to all managers to ensure officers have all the skills required to respond to our customers in a timely and considered manner.

## **CONCLUSION**

Having considered the evidence provided by all witnesses, the Task Group Members have gained a greater understanding of many aspects of the Planning process.

- By using two particular case studies Members were able to gain a good insight into improvements that have already been made following the Planning Application for the Former Landfill Site, Alvechurch Highway, Lydiate Ash and subsequent problems which had arisen from that particular application.
  - Although this Planning Applications was initially used as a case study the Task Group reiterate the concerns raised by the residents in respect of the safety of the Marlbrook Tip site and support the urgency and need of an expert report on the site.
- The Task Group acknowledged that the Council had made mistakes over the years in this case and although the application for Longbridge East and Part River Arrow, Groveley Lane, Cofton Hackett was at the earliest of stages Members were optimistic from the evidence they had received that lessons had already been learnt and this development would run much more smoothly.
- It has also been recognised that any development, irrespective of size, does have an effect on residents and should any conditions or enforcement be necessary all applications should be handled with the same level of importance.
  - The Longbridge application should be closely monitored in order to prevent the same mistakes being made again. There is however also a need for further improvement, to ensure that mistakes are not repeated and this is reflected in the recommendations contained within this report.
- Several important concerns have been raised within the Internal Audit Report and from the evidence received and investigations carried out by the Task Group, Members concurred with that report and the recommendations within it. For the process to move forward in an appropriate and timely manner it was important that those recommendations were implemented within the timescales given.
  - To ensure the recommendations within the Internal Audit Report are carried through, the Task Group recommends that the recommendations are included within the Overview and Scrutiny Board's quarterly recommendation tracker report.
- Members were concerned at the inconsistency of the recording of service requests and complaints in respect of Planning Enforcement issues. The Head of Planning and Regeneration informed Members that steps had already been taken to rectify this and staff would be

receiving training on the current system, which was not being utilized to its full potential.

- Following discussions with the Customer First Officer, Members requested that service requests also be included within the iCase Customer Feedback Complaints system to ensure that an audit trail was in place should these requests either escalate to customer complaint status or a large number of requests be received which referred to one particular area/planning application.
- In summary, lessons have been learnt and the investigation has raised a number of issues which impact on other areas of the Council's services and its reputation and performance which re-enforces the need to ensure services are pro-active and cost effective and not at risk to unnecessary additional cost and loss of reputation to the Council.
- The Task Group notes and supports the changes already implemented and the pro-active approach taken by the Head of Planning and Regeneration and the Customer First Officer in light of their own observations and critical analysis of the processes in place.
- Members wish to re-iterate that the outcomes of this report are to look forward and to ensure that systems are improved; for staff to receive appropriate training and processes to be tightened.

**PLANNING POLICY TASK GROUP**

**TERMS OF REFERENCE OF THE TASK GROUP**

The attached Overview and Scrutiny exercise scoping checklist, was completed by Task Group Members in consultation with both the Head of Planning and Regeneration and the Head of Legal, Equalities and Democratic Services and formed the basis of the investigations carried out and took into account the following specific areas:

- To review the remit of Planning Conditions and their effectiveness.
- To review the Council's activity in terms of Planning Enforcement, to identify strengths and weaknesses and to make recommendations for improvements where necessary.
- To review the way in which the Council responds to enforcement issues and where these can be improved.



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## OVERVIEW AND SCRUTINY EXERCISE SCOPING CHECKLIST

This form is to assist Members to scope the overview and scrutiny exercise in a focused way and to identify the key issues it wishes to investigate.

- Topic: **Planning Policy Task Group**

- Specific subject areas to be investigated:

- To review the remit of Planning Conditions and their effectiveness.
- To review the Council's activity in terms of Planning Enforcement, to identify strengths and weaknesses and to make recommendations for improvements where necessary.
- To review the way in which the Council respond to enforcement issues and where these can be improved.

- Possible key outcomes:

(i.e. please state what Members hope to achieve through this investigation):

- Recommendations which lead to a more rigorous and consistent implementation of the Enforcement Policy through out the District.
- Recommendations which lead to an improved process for setting realistic and enforceable Planning Conditions.
- A more robust process for managing public concern about enforcement issues.

- Should the relevant Portfolio Holder(s) be invited to give evidence? **YES**

- Which officers should be invited to give evidence?

(Please state name of officer and/or job title)

Head of Planning and Regeneration  
Enforcement Officer  
Member of Legal Team  
Customer First Officer

- Should any external witnesses be invited to give evidence? **YES**  
If so, who and from which organisations?

Ward and Parish Councillors  
Local Residents (in respect of Marlbrook Tip area)

- What key documents/data/reports will be required?

Planning Enforcement Policy  
Planning Conditions

- Is it anticipated that any site visits will be required? **YES \***  
If so, where should members visit?

In respect of the Marlbrook Tip site.

- Should a period of public consultation form part of the exercise? **NO\***  
If so, on what should the public be consulted?

(Please Note: A separate press release requesting general comments/suggestions from the public will be issued in the normal way at the beginning of the investigation.)

- Have other authorities carried out similar overview and scrutiny exercises? **YES**  
If so, which authorities?

Not recently, however Borough of Pendle carried out an exercise in March 2006 and Ealing in February 2006.

- Will the investigation cross the District boundary? **NO\***  
If so, should any other authorities be invited to participate? **NO\***  
If yes, please state which authorities:

- Would it be appropriate to co-opt anyone on to the Task Group/Board whilst the Overview and Scrutiny exercise is being carried out? **NO\***  
If so, who and from which organisations?

- What do you anticipate the timetable will be for the Overview and Scrutiny exercise?

Anticipated Task Group Report to be presented to February 2012 Overview and Scrutiny Board meeting.

**PLANNING POLICY TASK GROUP**

**WITNESSES**

The Task Group considered evidence from the following sources before making its recommendations.

**External Witnesses**

Written and/or verbal evidence was received from the following external witnesses:

Mr. Roy Hughes	Resident
Mrs. Sue Hughes	Resident
Mr. Tony Ormond	Resident
Mr. Paul Batchelor	Resident
Mr. Keith Woolford	Resident
Mr. Lyndon Essex	Environment Agency

**Internal Witnesses:**

Ms. Ruth Bamford	Head of Planning and Regeneration
Ms. Sharon Sharpe	Customer First Officer
Ms. Thelma Warwick	Lead Auditor (Worcestershire Internal Audit Shared Service)
Mr. Dale Birch	Development Control Manager (Operations)

**Councillors:**

Kit Taylor	Portfolio Holder for Planning, Core Strategy, Regulatory Services and Strategic Housing.
John Ruck	Ward Councillor (Marlbrook) and Vice Chairman of Planning Committee

**PLANNING POLICY TASK GROUP**

**Bibliography and Research Documentation**

**Circular 11/95: Use of conditions in planning permission** from the Department of Environment.

**Highway Conditions**

**Bromsgrove District Council Standard Conditions**

**Town and Country Planning (Use Classes) Order 1987 (as amended)**

**Bromsgrove District Council Planning Enforcement Policy** which had been considered by the Planning Committee on 28th March 2011 and adopted at Council on 20th April 2011.

**Bromsgrove District Council Planning Committee Agendas and Minutes** with reference to the Planning Application for Longbridge East and Part River Arrow, Groveley Lane, Cofton Hackett.

**Bromsgrove District Council Planning Permission Decision Notice** dated 25th October 2011 for Longbridge East and Part River Arrow, Groveley Lane, Cofton Hackett.

**Bromsgrove District Council Planning Committee Agendas and Minutes** with reference to the Planning Application for Former Landfill Site, Alvechurch Highway, Lydiate Ash.

**Bromsgrove District Council Planning Permission Decision Notice** dated 25th January 2006 for Former Landfill Site, Alvechurch Highway, Lydiate Ash.

**Minutes from the Marlbrook Tip Working Group** – October 2008 to June 2011.

**Internal Audit Report Ad hoc Investigation: Marlbrook Tip** 16th December 2011.

**Summary of Findings of A. D. Horner Ltd at Former Landfill Site, Alvechurch Highway, Lydiate Ash** dated 9th June 2011

**Making Complaints Count** – Bromsgrove District Council Complaints Procedure Guide.

**Bromsgrove District Council Customer Feedback Policy**



**Notes from Public Meeting held on 29th November 2011 in respect of Marlbrook Tip** (and attended by the Task Group Chairman)

**Presentation on the Planning Process** by the Head of Planning and Regeneration

**Copy Correspondence** from residents in respect of Marlbrook Tip

**Written submissions** by a resident from the vicinity Marlbrook Tip

**Written response** from the Environment Agency to questions from the Planning Policy Task Group



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