

# Planning Service Follow-up Review – Ceredigion County Council

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## Summary report

#### **Summary**

#### **Audit Criteria**

The objective of this review was to assess the Council's progress against the ten recommendations made in our <u>Audit Wales Review of the Planning Service 2021 report</u>. The recommendations in our original report form the audit criteria for this follow-up review.

#### What we reviewed and why

- Council planning services are strategically important enablers underpinning many major and important developments, including new school builds, developing care homes, housing developments and tourist accommodation. These developments can help councils achieve their corporate objectives and ambitions.
- 3 Ceredigion County Council (the Council), as a Local Planning Authority (LPA) has an essential role to play in identifying development needs; what areas need protection or enhancement; and in assessing whether a proposed development is in line with local and national policies.
- As part of our 2021-22 Ceredigion Council Audit Plan, we undertook a review of the Council's planning service to determine whether the service was effectively and sustainably meeting its objectives and contributing towards the achievement of the priorities in the Council's Corporate Strategy. In October 2021, we published our findings from that review¹ and concluded that whilst Council Members and senior officers viewed the planning service as strategically critical, significant longstanding weaknesses in the Development Control Committee's governance arrangements were not sustainably or cohesively supporting the Council to improve performance and achieve its strategic objectives and priorities. We issued ten recommendations in that 2021 report.
- We undertook this subsequent planning service follow-up review between September 2022 and February 2023. We used a range of audit methods in conducting this review including interviews, document reviews and observations of the Council's Development Management Committee.
- We focused on the Council's progress against our recommendations in our 2021 Planning Service report.
- We have also made further recommendations as set out in Exhibit 2 below. Some of these relate to our original 2021 recommendations, but others relate to new findings as part of our follow-up review to help the Council going forward.

<sup>&</sup>lt;sup>1</sup> Audit Wales, <u>Ceredigion County Council – Review of the Planning Service</u>, November 2021

#### What we found

- As set out in **Appendix 1** below, we found: The Council has taken swift action to begin responding to the original recommendations in our 2021 Review of the Planning Service report. However, the Council now needs to further refine its Development Management Committee procedures and governance arrangements so that they are fully understood, applied and embedded in a way that is transparent and provides value for money for the Council as a whole.
- 9 Further detail on our assessment of the Council's progress in addressing each of our recommendations is set out in **Appendix 1**.
- 10 The detailed report provides an overview of our findings.

## **Detailed report**

# Overview of the Council's progress in addressing our original Planning Service review (October 2021) recommendations

- 11 We recognise that the scale of the operational, governance and cultural changes and improvements needed to address the historical longstanding Development Management Committee weaknesses we reported on in our 2021 report will take time for the Council to fully address and embed.
- Our October 2021 Planning Service report included ten recommendations for the Council to address ranging from issues relating to governance arrangements, service planning and monitoring.
- The Council quickly agreed new governance arrangements for the Development Management Committee and worked closely with the Members to do this.
- The Council moved swiftly to approve, by March 2022, several constitutional changes to the arrangements supporting the Development Management Committee. The Council:
  - changed the committee's name from Development Control to Development Management.
  - reduced the number of Members on the committee from 21 to 15.
  - approved a new scheme of delegation. This ensures the committee considers all major and strategically important planning applications and planning applications submitted by the Council, planning officers and Elected Members.
  - developed a term of reference for the Development Management committee.
  - introduced data protection and GDPR guidance for Development
     Management Committee members when determining planning applications.
  - approved a Member's Protocol of Good Practice in Planning.
- 15 Following the Local Government elections in May 2022, the Council's Development Management Committee membership changed as newly Elected Members joined the Committee.
- Officers delivered a broad range of training to assist all Members of the new Development Management Committee on the purpose of the committee, their role on the committee and important local and national planning policies.
- The role the Development Management Committee plays in contributing to the Council's corporate objectives is continuing to develop. It is positive to see the Committee now considers major and strategically important applications and is making decisions in the public interest on sensitive and complex applications of strategic importance. However, some minor householder planning applications addressing individual concerns which do not meet local and national planning policies are still being called into Development Management Committee. These applications can be dealt with under officers' delegated authority and take up

Committee time and resources. Going forward, the Committee should focus on its strategic role by investing its time more on the strategically important applications it receives to have a more significant and wider impact on local communities and the Council and county.

- The Development Management Committee has made significant improvement in adhering to data protection principles and the processing of personal information in accordance with the Data Protection Act 2018 and the UK General Data Protection Regulation. The Development Management Committee now rarely discusses applicants' personal information.
- The Planning Service is making progress in addressing its planning application backlog with the help of external consultants. However, despite a similar arrangement with external consultants in relation to the enforcement case backlog, enforcement cases are not reducing in the same way, which impacts on the Council's performance. There remains a lack of specialist support within the Planning Service for enforcement officers to progress enforcement cases. The Council has not agreed its strategic direction for enforcement, and enforcement is an area of work that is a growing concern for staff and Members of the Council.
- The Council currently has no intention to make its live broadcasts of its
  Development Management Committee available electronically to the public
  following the meetings. Ceredigion Council is the only Local Planning Authority
  (LPA) in Wales not to do this. The Council has no intentions to record its
  Development Management Committee meetings and make them electronically
  available after live broadcast until they are required to do so under further Welsh
  Government regulations. This is not in line with best practice and the Nolan
  principle of openness in public life<sup>2</sup>. This results in a general lack of transparency
  and accessibility, particularly for those members of the public or planning service
  applicants wanting to observe the Council's Development Management Committee
  meetings at a time which is suitable to them.
- The Council could do more to observe and adopt good practice from LPAs around Wales. The planning service has begun a review of other LPAs' governance arrangements. To date, it has contacted two neighbouring LPAs and there is opportunity for them to engage with more going forward. Following the Council's review of other LPAs and its subsequent report to Council in March 2022 with an extensive list of changes, the Council decided to retain its Site Inspection Panel (SIP) containing only one third of the Committee membership and introduced a Cooling Off group with only 50% of the Committee membership. Other LPAs do not have these arrangements that increase the propensity and risk to Members and officers of any legal challenges in relation to pre-determination of planning decisions, and as they involve a limited number of Members from the Development Management Committee. This suggests the Council could learn more from other LPAs going forward.

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<sup>&</sup>lt;sup>2</sup> gov.uk: The Seven Principles of Public Life

- Along with continuing with the progress relating to our original 2021 Planning Service report recommendations, there are three key additional issues which the Council needs to address over the next few months to help it move further forward on its cultural change improvement journey.
  - strengthening the arrangements for local ward Member call in of planning applications into Development Management Committee and the reasons and material planning considerations for doing so;
  - ii. the frequency, transparency, efficiency and membership of Site Inspection Panels (SIPs); and
  - iii. the way the Cooing Off Group is operating.
- The strengthening of these three key areas will help the Council to better safeguard Members and officers when making decisions and improve the efficiency, effectiveness, economic outputs and sustainability of the Development Management Committee's governance arrangements and its wider impact on the Council and County as a whole.
- To help the Council, we have summarised below our findings in relation to each of the three new key areas for improvement.

#### i) Reasons for calling planning applications into Development Management Committee

- As in our previous report, not all the reasons provided by the Council's local ward Members for calling planning applications into the Development Management Committee are material planning considerations. There is guidance within the Council's current Scheme of Delegation which outlines how an application can be added to a committee agenda. The guidance requires consultation between the Corporate Lead Officer for Economy and Regeneration and the Local Ward Member to support a planning application going to the Development Management Committee. This is a single point of dependency on one officer to decide if the reasons meet the required standard. Should there be disagreement, this could potentially impact on working relationships and create a business continuity risk for the service in the event of the officer's sickness or absence.
- To address this issue of a single point of dependency, there are opportunities for the Council to further improve safeguards to ensure Members and officers are more supported and protected when calling applications into Development Management Committee. Currently, planning applicants can repeatedly ask local ward Members to call an application into the Development Management Committee, even if the application does not have robust material planning reasons for call in, in line with the Council's procedures. This creates a difficult situation for a local ward Member and allows an environment for external pressure to exist. Ensuring and enforcing that all reasons for calling an application into Committee are relevant planning reasons, would safeguard and protect Members and officers when making difficult decisions regarding which applications should go to

Development Management Committee and which should not. It would also ensure consistency with the Development Management Committee Terms of Reference.

To address the above risks and issues and to assess which applications are suitable for Development Management Committee in line with relevant criteria, the Council could establish a small group of officers who consider local ward Members' call-in reasons and determine if the reasons proposed are robust material planning considerations. Whilst there is no one way to achieve this, it could be a mix of officers tasked with upholding governance and planning policy, for example, the Chief Officer, Head of Planning Policy, and an officer from the Council's legal team. This arrangement would help to focus the Committee's time on considering the more complex and strategically important applications, rather than minor applications. The impact of making such changes would help to better safeguard officers and Members, focus the Committee's attention on those applications which are more in line with the role of the Development Management Committees purpose and contribute to the Council's corporate objectives.

#### ii) Site Inspection Panels

- The Council's Development Management Committee is increasingly deferring minor planning applications to a Site Inspection Panel (SIPs). This is not always an economic and efficient use of resources. Whilst the Council's arrangements for an SIP have been in place for some time, the Committee have been using SIPs more frequently since our October 2021 Planning Services report. The Council's current SIP guidance gives specific examples of when a SIP should be used and recognises that the use of SIPs can cause a delay in the planning process.
- The Welsh Government's Development Management Manual states 'Site visits should only be held on an exceptional basis where the benefit is expected to be substantial. Where required they should be identified in advance of the committee meeting at which the application is due to be discussed and the site visit should occur no more than a week in advance<sup>3</sup>.' This ensures as little a delay as possible in determining a planning application.
- 30 If the Committee is missing visual perspectives from the officer report, which results in increased SIPs, the Council can explore alternate ways to address this, such as more site photos, video of the site and other such activity, which it used during the first wave of the pandemic. Regular SIPs for minor applications are not an efficient use of Committee member or professional officer time and Council resources at a time when planning and other services across the Council are already under significant financial and workforce pressures due to wider national and global pressures. It can also cause delays in the planning process.
- 31 Currently, only five of the Council's Development Management Committee

  Members receive an invite to a SIP. This arrangement does not give all Committee

  Members equal access to information. Each member of the Committee should

<sup>&</sup>lt;sup>3</sup> Welsh Government, Development Management Manual

- have equal opportunity to visit and assess an application site and make their own judgements based on first-hand information to ensure transparent and informed decision making.
- 32 At the Development Management Committee meeting following a SIP, the five SIP Members address the Committee with their views of the site before the Committee debates the application. Currently this group of five Committee Members make recommendations to the Development Management Committee on their observations of the site and the merits of the application. This practice is not in line with the Council's SIP guidance and the Council's Members Planning Protocol of Good Practice in Planning. The Council's own guidance clearly states that SIPs are 'not a forum for debating the application' and the Council's own Protocol states Members must 'ensure that you treat the site visit only as an opportunity to seek information' and 'don't express opinions or views on the proposal to anyone'. In practice, SIP Members currently discuss the merits of an application as evidenced in the reports to the Committee. The reports contain the recommendation from the SIP Members as to whether to approve or refuse the planning application. Allowing the Committee's members to discuss the merits of any application, outside the formal Development Management Committee meeting arrangements, places those Members at risk of pre-determining the planning decision and the potential resulting legal consequences.

#### iii) Cooling Off Group

- In March 2022, as part of its review of the Development Management Committee's governance arrangements, the Council approved establishing a Cooling Off Group.
- Typically, deferring applications for a 'cooling-off period' is in accordance with the Welsh Government Development Management Manual. A cooling-off period allows LPAs to review the risks of a decision contrary to planning policies and for officers to provide Members with any additional information.
- The difference in Ceredigion Council is that it has constituted a specific Cooling Off Group on which 7 of the 15 Members of the Development Management Committee sit and which is politically balanced.
- We understand that the Council intended for the Cooling Off Group to act as an educational and learning forum for the Development Management Committee. It was intended that this group provide a pause and reflect opportunity for the Committee's Members to sense check and learn further about the related planning policies and impacts in relation to any potential decision.
- What we found was the Cooling Off Group discussing individual planning applications. Upholding the Cooling Off Group as an educational forum would help to safeguard Members and officers against any perceived or actual predetermination risks and any unintended consequences and legal recourse. As confirmed in the Council's constitution, pre-determination risks placing the Council at risk of a planning decision being vulnerable to legal challenge.

- 38 The Council's 'Member's Protocol of Good Practice in Planning' section 10a instructs that Members must come to Development Management meetings with an open mind and demonstrate that they are open minded. Also, in line with the Council's delegated authority and to ensure best practice, discussions on specific applications which have been called into Development Management Committee should take place within Development Management Committee meetings.
- 39 Repurposing the way the Cooling Off Group works in practice to be an educational forum only, as intended, will help safeguard officers and Members and mitigate against risks relating to predetermination and a lack of transparency. As such the Council should
  - a. ensure the Cooling Off Group does not discuss the details of any individual planning applications;
  - ensure the Cooling Off Group does not make recommendations back to the full Development Management Committee on whether to approve or refuse planning applications; and
  - ensure the Cooling Off Group includes all Members of the Development
     Management Committee so that they all benefit from the wider learning and
     are in receipt of the same information relating to planning policies.
- To support the above issues, and to facilitate further improvement. the Planning Service and the Legal Team should work more closely to ensure that related policies and governance arrangements are developed and implemented in a joined-up way both constitutionally and in practice.

#### Recommendations

#### Exhibit 1: recommendations.

The table below sets out the recommendations that we have identified following this review.

#### Recommendations

R1 Progress the partially met and not met recommendations in our 2021 Planning Services report in order that they are fully addressed and culturally embedded within the Council.

#### Recommendations

- R2 Develop and implement a formal arrangement to review and approve the material planning reasons provided by local ward Members when calling a planning application into the Development Management Committee to ensure Members and staff are safeguarded and that the Committee focusses its time on more strategically important applications.
- R3 Review the Site Inspection Panel practices and procedures to safeguard against any perception of pre-determination by a small group of Committee Members to ensure:
  - all Committee Members are invited to site visits;
  - site visits are by exception, comply with Site Inspection Protocols and are used economically to ensure an efficient and proportionate use of resources; and
  - site visits are identified in advance of Development Management Committee meetings in line with the Welsh Government Development Management Manual.
- R4 Repurpose the way the Cooling Off Group works in practice so that it upholds its intended purpose as a learning and educational forum for Members to receive further information on local and national planning policies to support Development Management Committee decision-making. This will safeguard Members and officers against any perception of pre-determination by a small group of Committee Members.

# Appendix 1

# Audit Wales assessment of progress against the proposals for improvement in our 2021 report

Exhibit 2: assessment of the Council's progress in addressing our 2021 proposals for improvement.

2021 Proposals for Improvement	Audit Wales's assessment of the Council's progress
R1 The Council should review its constitution to strengthen the governance of its development control arrangements. The review should:  a) learn from the development control governance arrangements of other Local Planning Authorities (LPAs);	Recommendation partially met.  The planning service has begun a review of other LPAs governance arrangements. To date – it has contacted two neighbouring LPAs and there is opportunity for them to engage with more going forward. Following the review and subsequent report to Council in March 2022 with an extensive list of changes, the Council decided to retain the Site Inspection Panel (SIP) containing only one third of the Committee membership and introduced a cooling-off group (COG) with only 50% of the Committee membership. Other LPAs do not have these arrangements due to the propensity for pre-determination and limited number of members involved. This suggests the Council could learn much more from other LPAs going forward.

2021 Proposals for Improvement	Audit Wales's assessment of the Council's progress
b) develop an agreed Terms of Reference for the Council's Development Control Committee, to clearly state its purpose, role, and responsibilities, and how it links to Corporate Priorities;	Recommendation met.  The Council has amended its Terms of Reference to clearly state the role and purpose of the Development Management Committee. However, while the Committee's Terms of Reference state the Committee must 'consider and determine applications, so as to advance and contribute to the Council's Corporate Strategy and Priorities through thorough consideration of major developments county-wide', the Committee is uncertain as to how to consider these types of applications, as the Committee's questions are limited and no SIPs requested.  Going forward, as these are new types of planning applications to the Committee, officers can provide further learning, development, and support to the Committee Members. As all the other LPAs in Wales record and make available their planning committees for view after committee meetings, there is an opportunity for the Development Management Committee to observe and learn from other committees as to how to actively consider major planning applications.
c) define what it deems as strategically important and 'major' planning applications;	Recommendation met.  The Council's constitution includes a definition of major and strategically important planning applications and the Development Management Committee now routinely receives these applications.

2021 Proposals for Improvement	Audit Wales's assessment of the Council's progress
d) strengthen the Development Control Committee's scheme of delegation by considering raising the threshold for planning applications called into Committee to allow it to better focus on more strategically important and major applications;	Recommendation partially met.  The Council's scheme of delegation describes circumstances when the Development Management Committee should have planning applications referred to them for decision. The Scheme of Delegation states – 'The determination of planning applications following a request of the Local Ward Member, in consultation with the Corporate Lead Officer-Economy & Regeneration, due to local interest and circumstances.'  The Council strengthened its Scheme of Delegation and retained the ability for local ward Members to be able to call in planning applications but the reasons for calling in planning applications to Development Management Committee are not always based on material planning considerations and it is unclear what 'due to local interest and circumstances' means within the current Scheme of Delegation. We make an additional specific recommendation in this report to address this.
e) ensure planning applications submitted by or on behalf of the Council's officers and Members are considered by the Development Control Committee and not under officer delegated powers to safeguard against any perceived conflicts of interest and to promote independence and transparency;	Recommendation met.  The Council amended its Constitution to address this recommendation, and its Development Management Committee now receives applications submitted by officers, applications on Council owned land and elected Members.

2021 Proposals for Improvement	Audit Wales's assessment of the Council's progress
f) review the balance of time Local Ward Members have to speak on planning applications at Committee meetings as compared to applicants and objectors;	Recommendation met.  The Council's constitution includes changes to public speaking arrangements for the Development Management Committee. All speakers, including local ward Members have five minutes to address the Committee. This addresses the balance of time individuals have.  We have observed that when Local Ward Members address the Development Management Committee, they are not informed of their five minutes. However, Local Ward Members rarely speak for longer. Any applicant, agent or objector addressing the Committee is informed of their five minutes to address the Committee.
g) review and include the Council's Planning Code of Practice in the constitution and ensure Members understand and act in accordance with it.	Recommendation met.  The Council developed 'operational procedures' which, aside from the Site Inspection Panels, are being adhered to.  However, as stated in this report, we have concerns with the operation of the Cooling Off Group and its current working practices.
R2 The Council should ensure that its Development Control Committee and Committee support arrangements comply with data protection principles and the processing of personal information in accordance with the Data Protection Act 2018 and the UK General Data Protection Regulation.	Recommendation met.  There is significant improvement with Committee Members not discussing applicants' personal details when debating planning applications. The Council needs to ensure that any Local Ward Member addressing the Committee is also fully aware of their responsibilities to comply with data protection.

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2021 Proposals for Improvement	Audit Wales's assessment of the Council's progress
R3 The Council's Development Control Committee Members need to ensure that any planning decisions are based on sound material planning considerations, and not applicants' personal circumstances.	Recommendation partially met.  There has been much positive progress in relation to adherence with GDPR and the discussion of applicants' personal circumstances.  Several the Committee's decisions on the minor and householder type planning applications are made following a deferral to a SIP where a small group of Members discuss and debate the merits of the application and some of these relate to applicants' personal circumstances, this is against the Council's SIP guidance and protocols.
R4 The Council needs to ensure that recordings of its 'in public' Development Control Committee meetings are made publicly available after Committee meetings to adhere to the future requirements of the Local Government and Elections (Wales) Act 2021.	Recommendation not met.  Whilst the Council broadcasts all its committees live, it only makes the Cabinet and Council broadcasts available electronically afterwards. Ceredigion is the only LPA not to make the live broadcasts of its Development Management Committee available electronically after the meeting.

2021 Proposals for Improvement	Audit Wales's assessment of the Council's progress
R5 The Council should ensure that Development Control Committee decisions relating to 'affordable' homes in the open countryside are made and reported accurately in accordance with the Council's Affordable Housing supplementary guidance.	Recommendation met.  The Council completed a review of its affordable dwellings to determine whether: large single affordable dwellings in the open countryside are having a significant effect on the numbers of affordable homes reported to the Welsh Government; and whether such decisions contrary to professional officer advice, in relation to large single affordable dwellings in the open countryside, give rise to the risk that the applicants of such dwellings could decide to legally challenge the 'affordable' status of their properties when selling them in the future.  The Council identified the number of planning applications approved in 'other locations' since 2015. The Council also identified where the affordable homes are being built and the size of the dwellings. The Council's review concluded this equated to 17% of affordable homes permitted. To ensure more accurate reporting of affordable housing in future, the Council intends to review the floor areas and bedroom numbers of affordable dwellings and TAN6 dwellings with Full or Reserved Matters permission. It intends to add this information to its internal monitoring process and those dwellings that exceed the maximum size can be identified and discounted when reporting to the Welsh Government.
R6 The Council and Development Control Committee should assess the cumulative implications and long-term infrastructure impact of approving single affordable dwellings and TAN 6 planning applications in the open countryside to ensure they contribute sustainably and cohesively to the Council's wider corporate priorities.	Recommendation not met.  As stated in response to R5, the Council completed a review of the size of permitted affordable dwellings in open countryside and 'other locations'. However, this review did not highlight the cumulative assessment on the impact to the infrastructure, for example, community health provision, waste collection, school transport and places etc, when approving dwellings in the open countryside or 'other locations'.

2021 Proposals for Improvement	Audit Wales's assessment of the Council's progress
Service Planning: The Council's Planning Service should:	
R7 More clearly present its performance information and targets in its business plans.	Recommendation partially met.  The Council's Development Management business plan 2022-23 includes a self-assessment looking at three key areas: what is working well, what the service is worried about and what needs to happen. This provides a clear picture of the service. However, the business plan shows no baseline data and a limited number of targets to support the service's objectives. Therefore, the business plan does not clearly present performance information or targets. The Planning Service is putting in place Service Standards to provide clarity on what applicants/agents can expect from the Service and the role of applicants/agents in contributing to a smooth planning application process. Once finalised, the Service Standards should provide details of the services on offer, the standards the service strives to meet, and measurable performance targets. This information is intended to be readily available for officers, Elected Members, local communities, developers, and other interested parties. The intention is for the finalised performance measures in the Service Standards to be included in the business plan.

2021 Proposals for Improvement	Audit Wales's assessment of the Council's progress
R8 Review the effectiveness and efficiency of combining the Development Management Officer and Enforcement roles including the impact on performance.	Recommendation not met.  The Council has not undertaken this review. The Council has engaged consultants to assist with reducing the backlog of planning applications and enforcement cases. Despite a slow start, the consultants are improving the speed of their decision-making on planning applications but not for enforcement.  The Council is considering the role of enforcement generally, including in other service areas such as waste and recycling and environmental health. During our fieldwork, we received a strong message that planning enforcement is a growing concern in the county, which needs addressing.
Monitoring R9 The Council should establish a framework to assure itself that the Development Control Committee contributes cohesively and sustainably to achieving the Council's corporate priorities.	Recommendation not met.  The Planning Service intended to develop a 'Sustainability Checklist' for the Development Management Committee to assess the individual and cumulative impact of decision making. Officers would complete the checklist prior to committee meetings and include the checklist as part of the Committee report pack. However, we have not seen evidence of the service implementing this arrangement.

2021 Proposals for Improvement	Audit Wales's assessment of the Council's progress
Well-being of Future Generations R10 In making any changes to the planning service, the Council should take the opportunity to consider how it might act more closely in accordance with the sustainable development principle in contributing to the delivery of the Council's well-being objectives when making planning decisions.	Recommendation partially met.  Officers included the Sustainable Development principle within the new Development Management Committee's training in May 2022. However, some Members' interpretation of 'sustainable development' differs from Planning Policy Wales Edition 11 definition of sustainable development. Contained in the Committee's Terms of Reference is for the Committee 'to take into account the sustainable development principle in determining planning applications'. To adhere to the Committee's purpose, further Member training is required so the Committee fully understands what sustainable development means in the planning context.



**Audit Wales** 

Tel: 029 2032 0500

Fax: 029 2032 0600

Textphone: 029 2032 0660

E-mail: info@audit.wales

Website: www.audit.wales

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