

Appendix 1

DRAFT

Milton Keynes

**Decision Making on Planning
Applications**

Draft Review Proposal
Consultation Document

Draft Version 1 @ 8-3-19

Marc Dorfman

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Introduction and Purpose of the Review

This Review Proposal has been triggered by the way Application 16/03023/FUL – a Storage and Distribution Warehouse scheme at Blakelands 1, Yeomans Drive - has been decided and processed.

Initially there were concerns about how and why a Planning Committee, (date XX) decision to approve the scheme with conditions resulted in a Decision Notice on 17-1-19 being issued without 14 of the planning conditions agreed by Committee.

Subsequently members of the community, councillors and officers in the Council wanted to understand this mistake in a wider context:

1. **PRE - APPLICATION PROCESS:** What is the pre - application process for – and how can the community and members be sure officer advice is consistent with agreed planning policy and standards? Why is pre application advice often confidential? How can the community and members be assured officers are not ensuring the scheme will be approved even when there are likely to be many objections?
2. **WHEN AN APPLICATION ARRIVES – WHAT HAPPENS?** How do officers make sure the application is processed efficiently and all the right people informed about it?
3. **CONSULTATION:** What are the values and purpose behind consultation on planning applications in MK – how can the community and members be sure that all their concerns are taken into account? What are “relevant” planning comments? Why can’t the impact on neighbour property prices be taken into account when a big new development is proposed?
4. **CASE ALLOCATION:** On what basis are planning application cases allocated to officers?
5. **ASSESSMENT – CONSULTATION COMMENTS:** How should officers consider consultation comments by the community; members and advisors – what weight should be given to each?
6. **ASSESSMENT – POLICY & STANDARDS:** How do planning officers assess planning applications? What balance should officers give objections from the community compared to comments by professional advisors?
7. **ASSESSMENT – REPORT QUALITY:** How should reports on application be written – what should they take into account, and how do they find the right balanced and justified recommendation? How are officer reports checked and signed off in MK?
8. **DECISION – DELEGATED / COMMITTEE:** Which applications are delegated to officers to decide and which to Committee? How should Planning Committee make decisions on planning applications before them – and what weight should they give to the officer’s report and community comments? Can a Committee overturn an officer’s recommendation – what are the rules?
9. **DECISION NOTICE:** Once a decision is made, how does the City ensure the correct decision is sent out?
10. **MONITORING:** When a mistake is made – how does the Planning Service review and learn from mistakes and from good practice?

This draft proposal for a Planning Application Review is about these 10 issues.

Commented [DT1]: I wonder whether we need to understand it in the specific and wider context, ie. Cover both off in the 10 issues?.

Commented [DT2]: We need to be specific here as well. So why would applications be re-allocated generally and why would Blakelands have been re-allocated?

Commented [DT3]: Is the accuracy of submitted information and documentation including supporting documents being considered?

Commented [DT4]: This needs to include the issue raised by residents and Cllrs that pressure was exerted on an officer to make a certain recommendation.

Commented [DT5]: Residents want to know what role the Chief Planner and the Corporate Director had in the decision making process

Commented [DT6]: Needs to factor in the question that members have about the committee being misled by officers report and therefore coming to the wrong decision.

Commented [DT7]: Quality, accuracy and clarity of the report needs addressing

Commented [DT8]: Adequacy of systems and processes to issue the correct decision notice. How were some conditions included and not others, ie. There is an accusation that we selected which conditions should be included

Why is this a “Draft” Proposal?

When a mistake is made – it is sensible to produce a draft proposal and consult the stakeholders who will have an interest in the review. This draft is therefore out for consultation during **March – April 2019**. Please let us have your views. Please write to/email: XXXXXXXXXXXXXXXX by 30 April 2019.

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Commented [BS9]: The timeline will now be May 2019

Why is this Review not about fixing the Blakelands mistake?

Fixing the mistake is something the Council is working on. There is an officer project group that reports to members and to neighbours who are particularly affected by the development that is being constructed. This project involves specific planning and legal negotiations and actions to try and come to a fair and agreeable solution to neighbours, the developer and the Council as a whole. This is the project that is trying to “fix Blakelands”.

Commented [BS10]: We will need to adjust this depending on where we are with the JR. As it stands it creates an expectation that there is an ongoing project above and beyond the regulatory regime

So What is this draft proposal for Planning Application Review about?

In the meantime, this Review Proposal wants to look at the procedures and processes that allowed “Blakelands” to happen – and how can we ensure it doesn’t happen again?

How would this proposed Planning Application Review work?

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Commented [DT11]: Marc – is this something you would include?

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Commented [BS12]: May 2019

What is the timescale?

The review will commence in April 2018. It is expected to take approximately up to 20 days to complete. Due to other work commitments, the majority of the work is expected to take place in June/July. A (draft) report will be presented to the Audit Committee meeting on the 24th September.

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Commented [DT13]: Report to Scrutiny in October 2019

Commented [SP14]: The Review is being ‘managed’ under the auspices of the Audit Committee, and we have committed to going back to AC in September/October.

When the Review is completed – what will happen?

The findings and recommendations from the review will be presented as part of the report to the Audit Committee meeting, and action taken as appropriate. This will include any ‘lessons learned’, which will form the basis of a Service Improvement Plan. XXXXXXXXXXXXXXXX

Further points to cover:

When did officers know about the error? Did officers know about the error in the period when we (the Council) could have done something about it, ie Judicially reviewed the decision.

Did legal and planning officers react in a timely way when the issue was uncovered?

Points requested outside the scope but just to confirm:

Residents have asked that we review the Section 78 appeal. This is beyond the decision notice being issued and relates to the removal of the condition restricting lorry movements. However, it may be decided that this would confirm whether we knew about the flawed decision notice earlier in the year.

A Councillor has requested that the Council’s statement of case is reviewed for the JR. I am not sure what the benefit of this might be in terms of the ‘issues’, unless it’s a point about quality of work by legal and planning.

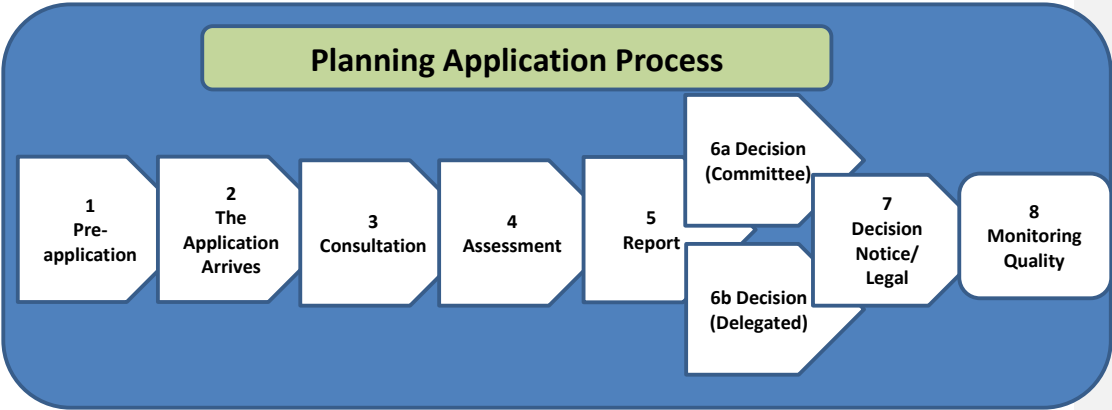
Residents are also questioning the role of environmental health officers and asking whether their performance has been negatively affected by the planning application as they are not seen to be responding appropriately to issues raised. Comment: I think this should be sent to Neil Allen (Head of Regulatory services asap and fed back to residents that it is out of scope.

The Planning Application Process – MK Draft Review Questions

This is rooted in the day-to-day aspects of the planning process as planners deliver and customers experience it. It is often based on the legal requirements of the Development Management Procedure Order (DMPO), which is a surprisingly readable and straightforward document.

(The DMPO sets out what is required by law: [April 2015: SI 2015 No. 595 - The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#). Note the [planning jungle website](#) maintains a consolidated version).

(Not Planning Appeals or Planning Enforcement)



1. Development Management - Customer, Community and Service Promises

MK has a Development Management Charter that sets out its commitments to good performance and fair decision making on planning applications

Like all other Planning Authorities, MK has consulted residents and businesses on a City Plan and a set of planning policies and development standards. These are all published on the Council's web site and are the basis for deciding planning applications.

Almost all decisions are made by planning officers under delegated powers, leaving a few important, strategic or especially contentious applications for planning committee.

Planning Committee members are all trained before they sit on committee.

Planning decisions are "community decisions". Planning is about finding the balance between housing and business growth on the one hand - and good building design, quality environmental standards and protecting the fair amenity of existing homes and businesses on the other. The agreed policies and development standards of MK are the criteria used to find that balance. These are the only things that can be used to consider planning decisions. The impact on the value of a property neighbouring the proposed development cannot be taken into consideration. The things that can be considered are called "relevant planning matters" – they yse include:

- the quality of the design;
- does the application fit into the character of the area;
- does the proposal overshadow or dominate a neighbour's property to a level that significantly changes the quality of life and environment of the occupants;
- noise and light pollution, severe traffic congestion, unacceptable flooding.

On contentious applications, the balance between a recommendation for approval and refusal can be fine. In these cases, officers must be careful to present a professional and well-judged case to Planning Committee. ~~And then~~ Trained elected members must consider that balance and in public, find a final decision. Planning Committee can overturn an officer's recommendation – but its must be on "relevant planning matters".

A good planning service...

Sets out a customer promise to planning applicants and the community and monitors against this promise and publishes the results.

Clearly sets out which decisions should be delegated to officers and which to Planning Committee

Has clear policies and standards for deciding planning applications – and these are understood by both supporters and objectors to planning applications.

Has a clear and ongoing training plan for officers and councillors who assess and make decisions on planning applications.

At Planning Committee – officers and members make it clear to the public how application decisions will be made. .

Monitor the planning application process – a) the efficiency and effectiveness of process for neighbours and the community; for applicants and for officers and members and b) the delivery of the objectives of the MK City plan and its development standards.

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Questions	Comments
1.1 How does MK keep officers and members up to date on planning regulations and good planning application decision making?	
1.2 How does MK check and review the efficiency and effectiveness of its planning application process for all its stakeholders?	
1.3 How does MK ensure good pre application practice? Do pre apps go to Planning Committee? If not why not?	
1.4 Are there any measures in place to help MK understand and manage the work of planning committee ? <ul style="list-style-type: none"> - Count of applications going to committee - Time taken for committee to make decisions (cf deferrals) - Counts of overturns - Survey consultees and objectors about how well Committee performs 	
1.5 How does MK ensure that that planning decisions are made well and quickly – but also in a way that consultees and objectors feel they are properly involved?	
1.6 How does MK make sure planning committee members can question an officer's report and recommendation and know when they can over turn it?	
1.7 MK DM Charter – is it monitored and published? What is MK's performance – improving/declining? Does MK have a DM Improvement plan?	
1.8 How does MK make sure officers and members know their respective roles and work well together?	
1.9 How effective is MK's scheme of delegation (delegated decision to an officer or decision by Committee) – how often reviewed?	
<p>QUESTIONS YOU WOULD LIKE ANSWERED?</p> <p>ANY QUESTIONS PARTICULARLY ABOUT THE "BLAKELANDS" 16/03023/FUL CASE?</p>	

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2. Pre-application

Good pre-app improves the quality of applications submitted to the council in the longer term. It enables early involvement in the evolution of a scheme and resolution of issues (or progress towards) prior to submission.

A good planning service...

Has a good and well-publicised pre-application service which acts as effective branding for a council that is both open for business and cares about environmental standards and neighbouring amenity.

Provides a pre-application service that

- reduces costs to the council at application stage;
- leads to fewer refusals and appeals;
- turns away early “no-hope” applications at very low cost for all
- ensures applicants get a corporate response from the whole authority
- and involves the early consideration of both development neighbours and planning committee members.

Questions	Comments
2.1 Does the MK pre app service deliver <ul style="list-style-type: none"> - reduced costs to the council at application stage? - fewer refusals and appeals? - early turn away of “no-hope” applications at very low cost for all ? - a corporate response from the whole authority - early consideration of both development? neighbours and planning committee members? 	
QUESTIONS YOU WOULD LIKE ANSWERED? ANY QUESTIONS PARTICULARLY ABOUT THE “BLAKELANDS” 16/03023/FUL CASE?	

3. Receipt / validation	
<p>Aside from any pre-application advice this is the first encounter that an applicant has with the council. It's important to get it right to start off on the right foot. The validation step is important because it is when 'the clock starts ticking' for measuring 8 and 13 week targets for planning decisions. It is also critical – because it is the moment when the local community and neighbours and members may first find out about the application for development.</p> <p>High numbers of invalid applications indicates problems with your Validation Check List, or/and your IT and administrative process and represents additional cost to the council and applicants.</p>	
A good planning service...	
<p>On declaring applications valid, begins working on them at the earliest opportunity.</p> <p>Does not use the validation process to 'manage' demand.</p> <p>Deals with validation within a few days of receipt (or shorter). Where it has validation 'targets' (e.g. 3 days) it takes care that this approach is not adding unnecessary delay to 'good' applications / or causing other 'perverse' outcomes in order to meet targets.</p> <p>Finds a balance between being helpful and proportionate but without doing rework for agents at public expense.</p> <p>Has clear guidance available and engages proactively with regular applicants to make their expectations and standards clear.</p> <p>Trims its validation requirements to the minimum, really questioning whether an extra set of information will add value to the consideration of the proposal.</p> <p>Applies a risk-based approach to some of the processes for high volume work e.g. minimal validation requirements, no site visits – perhaps linked to an incentive for agents to submit 'good work'.</p> <p>Uses common sense for example if they can see at validation stage that something is unacceptable, will advise applicants at the same time as letting them know about an application being valid/invalid.</p>	
Questions	Comments
<p>3.1 Is the local validation list regularly reviewed to make sure that it is relevant and necessary (e.g. Do we use all of the information that we routinely require?), or to look for ways of reducing the amount of information automatically required (e.g. by moving it into a discretionary category?).</p>	
<p>3.2 A good registration and validation service is delivered by staff that understands the elements of the local list that are always required, and where they have some flexibility. The opposite can be said of a service where staff rigidly apply the requirements of the local list on all occasions or wilfully apply their 'own' rules based on personal preference.</p> <p>What is your approach?</p>	

<p>3.3 The way that the service is structured and resourced can affect the number of hand-offs, applications queueing and bottlenecks. What have you done to mitigate against this?</p> <p>E.g. do registration / validation staff process applications through to decision? Do planners register and validate their own cases?</p>	
<p>3.4 Good councils try and prevent validation issues holding things up by working to the minimum legal requirement; phoning or visiting applicants to sort out issues (rather than using a letter or email as the default communication); asking themselves what else can be progressed while waiting for missing information.</p> <p>How closely do you follow these approaches?</p>	
<p>3.5 Do you 'performance manage' the validation process? E.g. do you know:</p> <p>How much works comes in valid and therefore ready to be worked on?</p> <p>Whether validation is an issue that affects all types of applications or just certain types?</p> <p>What is the standard time for an invalid application to pass through this stage?</p>	
<p>3.6 Do you regularly review or invite feedback that helps you understand:</p> <p>What the common validation issues are and the types of application they are associated with?</p> <p>What problems applicants are having submitting valid applications?</p> <p>What can be done to help them get it right first time?</p>	
<p>QUESTIONS YOU WOULD LIKE ANSWERED?</p> <p>ANY QUESTIONS PARTICULARLY ABOUT THE "BLAKELANDS" 16/03023/FUL CASE?</p>	

4. Consultation – Neighbours/Public; Councillors; Advisors

Consultation (for many applications) is a step required by law. It involves making neighbours; community groups/parish and town councils; local members and statutory consultees aware of the application and then inviting them to make comment on it.

A good planning service...

Uses its Statement of Community Involvement (SCI) to set out its consultation policy and complies with it.

Has a checklist that means that decisions about the process of consultation can be taken quickly and consistently.

Works with stakeholders to get timely consultation responses.

Ensures consultees know who the case officer is and have access to them to facilitate discussions. Or has a generic case system that ensure enquires are answered quickly.

Reviews how effective the different consultation methods are and make the most of the more effective methods e.g. many councils are reviewing how they use the media and letters in favour of site notices.

Questions	Comments
4.1 A good consultation process is conducted in plain English and makes it clear what is in or outside scope to change. It is done by staff who understand what is always required and where they have some flexibility. The opposite can be said of a service where consultation is often unclear about the issues at hand and/or that often without good reason goes beyond the requirement of the Law, perhaps due to staff applying their 'own' rules. How would you describe your approach?	
4.2 Are the results of consultation shared with applicants and the community immediately? It can play a part in reducing the need for conditions if an applicant has time to consider and respond to issues identified.	
4.3 Do you understand what consultees are typically concerned about, and when they get concerned? Most of the time you'll be consulting the same consultees about the same things; a little understanding on both sides can help to anticipate and address issues earlier and more proactively, and should lead to better and more timely responses.	
4.4 Consultees (including statutory ones) can represent a risk and a bottleneck to planning decisions. Do officers work proactively and engage with consultees on concerns prior to producing the committee report?	

4.5 Do you have measures or processes in place that allow you to understand how much time and resources are spent on consultation?	
4.6 Do you have any feedback mechanisms that allow you find out what consultees say about your approach to consultation?	
<u>Blakelands Specific Question:</u> <u>4.7</u> What was the Officer response to the concerns raised by residents in relation to the accuracy of the submitted drawings on noise, shadowing, and traffic?	

5. Consideration – Planning Application Assessment – Allocation to officers, Case Assessment and Consultations Assessment

A good planning service...

Has a flexible and proportionate approach: many councils go through a standardised approach for every application e.g. visiting the site and considering the application against a wide range of issues. This is because of a perceived need to be “bullet proof” against challenge.

Knows the issues that are regularly the subject of negotiation and considers whether particular policies (e.g. viability) are causing trouble without benefit.

Works with applicants (avoiding where possible quick refusals) when problems occur or revisions are required to the application and only refuse schemes that are clearly unacceptable and not fixable. Note that quick refusals can lead to “free go” applications.

Only use extension of time agreements and planning performance agreements when appropriate; not as a default way of bypassing NI targets.

Works with other parts of the service or council to ensure a co-ordinated and joined up approach.

Crucially has respect for the “consultation process” and ensures relevant planning matters are carefully taken into account

Employs case officers who are regularly trained to deal with planning applications and decision making criteria.

Questions	Comments
5.1 What criteria do you use to decide on whether a site visit is necessary on an application? Are there alternatives (e.g. Google Earth or similar, or applicant photos?).	
5.2 Do you have an early triage process that makes a decision about whether an application will ultimately get there or whether the kindest approach is a quick refusal? Do planners feel able to ask for help or a second opinion?	
5.3 Do you work with consultees to understand if there are issues that are typically/regularly the subject of negotiation so that you can address these concerns specifically?	
5.4 How closely do you work with other parts of the service (e.g. policy, design, enforcement, heritage) to look at opportunities to address issues that regularly occur as sticking points in negotiations?	
5.5 How is time managed at this stage e.g. is there a process that prompts for action on cases that are about to	

'expire'? How 'old' are cases once they get in front of an officer?	
5.6 How do you ensure that extensions of time and planning performance agreements are used properly i.e. in cases that genuinely need more time to approve?	
5.7 Do you carry out any performance management of this part of the process to understand volumes and where problems might be focused? e.g. Volume of free goes per application type Volume of withdrawn applications per type Volume of open applications per officer	
5.8 When a case is controversial and the planning balance fine how does a Cttee report get signed off and how is the planning balanced judged before it gets to Cttee?	
<u>Blakelands Specific Questions:</u> <u>5.9 What was the reason for the change in the case officer?</u> <u>5.10 What role did the Chief Planning Officer and Corporate Director Place perform in relation to the decision?</u>	

6. The Report

There is no requirement for a report on a planning application, although reports can be used as a “dry run” for the requirements of the decision notice. This is a very useful area to focus on as it will increase capacity. Equally on controversial applications neighbours, the community and members like to see a report in order to understand the “planning balance” behind the recommendation. Reports should properly consider all relevant consultation responses.

A good planning service...

Thinks about the audience and the purpose of the report (delegated, committee) and adjusts the content accordingly.

Ensures that reports set out the decision-making logic, accepting that these can vary widely in length, detail and approach depending on the complexity of the application. Even so, still make sure that the report is clear, focussed and relevant.

Is aware of risk and challenges to decisions.

Questions	Comments
6.1 Who decides what form a report should take and how long it should be? What criteria are these decisions based on?	
6.2 Is there inconsistency among officers e.g. do different officers follow different rules (for the same types of cases)?	
6.3 Report templates are often tweaked as a result of a perceived gap in a particular case. They can become longer and longer over time and represent a burden to everyone. When were they last critically appraised?	
6.4 Are officers clear about what the reports are for? Who the audience is? And do reports have any subsequent use?	
6.5 Do you ask councillors for their views on committee reports – are they meeting the needs of the committee?	
Blakelands Specific Questions:	
<u>6.6 Was the report accurate and objective in terms of content and recommendations?</u>	
<u>6.7 Were the section 106 obligations in line with policy specifically the public art contribution ?</u>	

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7. The Decision (Delegated)	
Decisions are made by a Planning Authority. In practise almost all decisions are made by planning officers under delegated powers, leaving a few important, strategic or especially contentious applications for planning committee.	
A good planning service...	
Has a clearly understood and accepted delegated agreement that enables decisions to be taken at the right level. Is clear about the purpose of every single report, and tailor the task according to its audience and risk profile. Makes sure that the reasons for the decision are clear and well communicated.	
Questions	Comments
7.1 How do you make sure that the triggers for call-in to committee are clear, well communicated and understood, and are regularly reviewed to reflect the needs and priorities of planning in your place?	
7.2 Good planning committees spend their time on important work. How do you make sure that the right work is getting in front of them?	
7.3 Have you considered alternative ways of getting a political steer on applications that is short of being called-in by committee?	
7.4 Are there any measures in place to help you understand and manage the work of the committee e.g. Count of applications going to committee Time taken for committee to make decisions (cf deferrals) Counts of overturns	
7.5 Are there any processes in place to get feedback e.g. What do committee members say about how committee is serviced by officers? Do your customers understand your decisions?	
WHAT QUESTIONS WOULD YOU LIKE ANSWERED? ANY QUESTIONS PARTICULARLY ABOUT THE "BLAKELANDS" 16/03023/FUL CASE?	

8. The Decision (Committee)

Decisions are made by a Planning Authority. In practise almost all decisions are made by planning officers under delegated powers, leaving a few important, strategic or especially contentious applications for planning committee.

A good planning service...

Has a clearly understood and accepted delegated agreement that enables decisions to be taken at the right level.

Is clear about the purpose of every single report, and tailor the task according to its audience and risk profile.

Makes sure that the reasons for the decision are clear and well communicated.

Questions	Comments
8.1 How do you make sure that the triggers for call-in to committee are clear, well communicated and understood, and are regularly reviewed to reflect the needs and priorities of planning in your place?	
8.2 Good planning committees spend their time on important work. How do you make sure that the right work is getting in front of them?	
8.3 Have you considered alternative ways of getting a political steer on applications that is short of being called-in by committee?	
8.4 Are there any measures in place to help you understand and manage the work of the committee e.g. Count of applications going to committee Time taken for committee to make decisions (cf deferrals) Counts of overturns	
8.5 Are there any processes in place to get feedback e.g. What do committee members say about how committee is serviced by officers? Do your customers understand your decisions?	
Blakelands Specific Question: <u>8.6 Did Officers act in accordance with the Code of Conduct, appropriate legislative requirements, and Council Policy?</u>	

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9. The Decision Notice (and legal agreement)	
A good planning service...	
<p>Aims to issue a 'shovel-ready' permission so minimises later work e.g. pre-commencement conditions; recognises the cost to applicants and risks to development of these conditions.</p> <p>Minimises the number of conditions to those that are essential.</p> <p>Has already discussed with applicants the conditions required and has agreed Heads of Terms for legal agreements.</p> <p>Minimises jargon to the legal minimum and makes sure that the decision is clear and well communicated</p> <p>Keeps up to date with the requirements of the DMPO; many people's knowledge is out of date.</p>	
Questions	Comments
9.1 What is in place to ensure the correct DN is issued after a delegated or Cttee decision?	
9.2 A decision notice can be attacked in various ways. Permissions can be JR'd, and refusals appealed. These represent risks to the council, but how often do they happen and is the 'bullet-proofing' proportionate?	
9.3 Performance – do you count the number of pre-start conditions you issue?	
9.4 Are there any processes in place to get feedback from customers about their experience and understanding e.g. do your customers understand your decisions?	
Blakelands Specific Questions: <u>9.5 Were the decisions, taken after the identification of the missing conditions, including the request for a second planning application, timely, robust, and appropriate?</u> <u>9.6 Have you checked other planning permissions to see if the mistake has been made as a systematic failure?</u>	

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10. Monitoring and Achieving Quality

After the decision notice, good councils monitor and learn about their work.

A good planning service...

Takes the planning committees on post-decision site visits to see how schemes turned out and to assess particular issues that they'd considered or acted on.

Ensures its planning officers can continue to "own" the development and deal with any problems or questions as they arise.

Monitor what doesn't start on site, and works with land owners and developers to resolve any planning related reasons for delays.

Has a well-resourced enforcement service that can help with monitoring and then enforcement breaches, and works to an enforcement plan.

Questions	Comments
10.1 How does the service monitor and learn from what developments get built?	
10.2 How does the service monitor and learn from schemes that do not get built or have stalled?	
10.3 Lots of quality assessment is focussed on finding problems or mistakes. Does the council notice and celebrate success?	
10.4 Is there an agreed enforcement plan that sets out and explains how enforcement is targeted and prioritised?	
10.5 How well is enforcement resourced e.g. do resources reflect the priority?	
10.6 Do you monitor complaints and record feedback from customers (e.g. using surveys)?	
QUESTIONS YOU WOULD LIKE ANSWERED? ANY QUESTIONS PARTICULARLY ABOUT THE "BLAKELANDS" 16/03023/FUL CASE?	

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