
SCRUTINY COMMITTEE - INFORMATION REPORT

Date Written	18 th June 2021
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Service Area	Planning (Development Control)
Committee Date	5 th July 2021

To: Chair, Ladies and Gentlemen

Planning Process and Public Involvement at Meetings

1.0 SUMMARY OF THE REPORT

- 1.1 The report aims to address the concerns of Members that, based on their local knowledge of the area and subsequent objections to certain planning applications, they are unable to refuse planning applications for fear of costs being awarded against the Council following a successful appeal by the applicant to the Planning Inspectorate. Material planning considerations are also discussed.
- 1.2 The report also considers how public involvement at Planning Committee meetings could be developed, and outlines opportunities for this.

2.0 INTRODUCTION AND BACKGROUND

- 3.1 This is being reported to the Scrutiny Committee following a request from the Chair who has asked for information on material planning considerations and whether the planning process can be changed and, if so, how any change be brought about. The Chair has also requested information on how public involvement in Planning Committees can be developed. Following the Scrutiny Committee the Chair will update Members of the Planning Committee and arrange a Members workshop.

3.0 WHERE WE WERE

- 4.1 This section provides a brief summary of the previous performance of the planning department (Development Control). It then provides information concerning the legal requirements in terms of publicising applications and how Local Planning Authorities must determine applications.
- 4.2 The Planning Annual Performance Reports (which have to be produced and submitted to WG annually) and the Welsh Governments Development Management Quarterly Returns (from 2014 – 2020) indicate that in terms of determining planning applications within the statutory 8 week period Merthyr Tydfil has been the best performing local planning authority in Wales each year from 2014 to 2020. (links to these are included in Background papers).
- 4.3 In the period January 2014 to May 2021, of the 57 planning appeals that were determined 46 appeals were dismissed (i.e. a success rate of 81%). This puts Merthyr Tydfil well within the top quartile of best performing local planning authorities in Wales in terms of successful appeal decisions.
- 4.4 When considering the complexities of the planning process and the number of objections received to planning applications, the department receives very few complaints (i.e. an average of 2-3 (stage 2) formal complaints each year). Indeed, since 2018 only 5 complaints have been referred to the Ombudsman. None of these were Upheld (i.e. there were no cases of maladministration found).
- 4.5 The Planning Annual Performance Reports (from 2014 – 2019) indicated a high level of customer satisfaction particularly when equated to an overall Wales comparison. Those using the planning service have consistently stated the ease and speed in which you can communicate and obtain advice from a planning officer being a particular strength of the service in Merthyr Tydfil.
- 4.6 Training has been provided to Planning Committee members on a number of topics including material planning considerations and the publicity process for Planning applications.

4.0 WHERE WE ARE NOW

- 5.1 Planning applications have to be determined in line with the adopted Merthyr Tydfil County Borough Local Development Plan (LDP), unless there is a very good reason not to do so (i.e. other material planning considerations). As Committee will be aware a Replacement LDP was approved by Full Council in January 2020.
- 5.2 In addition to the LDP, when determining an application, providing there is robust evidence, a wide range of other topics can be taken into consideration. These include, for example:
 - Other policies and guidance.
 - The extent and significance of the proposal.
 - The site itself, including its history and the current context.
 - Ecology, contamination, hydrology, ground conditions etc.
 - Concerns of local residents.

5.3 The Town and County Planning (Development Management Procedure) (Wales) Order 2012 sets out how planning application must be publicised. In the case of **minor/householder developments**, the application must be publicised for a period of not less than 21 days by means of:

- A **site notice** in at least one place on or near the land **or** by sending a **letter(s)** to any adjoining owner or occupier.

In the case of **major developments** (i.e. 10 or more dwellings or a site with an area exceeding 1 hectare), the application must be publicised by means of:

- A press notice in the local newspaper; **and**
- A site notice in at least one place on or near the land **or** by sending a letter to any adjoining owner or occupier.

5.4 Any Councillor can call any planning application (to be determined under delegated powers) to Committee either within 21 days of the publicised weekly list or within 10 days of an email sent by a planning officer notifying ward members of an objection/letter of support to an application.

5.5 The purpose of Planning Committee is to determine major and strategic planning applications, smaller applications like house extensions do not require Planning Committee approval, and can be decided under the delegated powers granted to the Chief Officer for Planning and Neighbourhood Services.

5.6 Planning Officers carefully assess the matters highlighted, including the issues raised as a result of the consultation and publicity processes and prepare a report. This report captures how a proposal was assessed and contains a description of the development, the site and its context, a site history, information on the policy framework and consultation responses. All planning reports (whether committee or delegated) will have a section providing a detailed summary of any objections/letters of support received as a result of the publicity exercise undertaken. The report will end with an analysis/planning considerations, conclusion, recommendation(s) and conditions or refusal reason(s).

5.7 In terms of the legislation, the way in which planning applications must be determined has not changed dramatically for a significant period of time. Changes in law/guidance may alter how certain applications are considered but essentially the application process and how applications are considered is the same. It is planning law that ultimately rules on whether something is a material planning consideration and, if so, how much weight should be attributed to it. If Members wish to change the planning system/legislation, this could only be undertaken by the Welsh Government.

5.8 As stated above, any Member can request that any application be reported to the Planning Committee within the timescales highlighted. They can also disagree with the officer's recommendation to approve/refuse an application. If an application is refused, contrary to the officer recommendation, and then subsequently appealed by the applicant, the Committee must agree which members would defend that appeal on behalf of the Council (i.e. Officers can not defend that decision) and they must provide sound, evidenced reasons for refusal

In terms of public involvement at meetings, the current system allows the public to attend and observe Planning Committee, but not to address it. This does not prevent the written concerns of local residents, any other member of the public or interested parties being fully taken into consideration when determining an application. Likewise, any additional written information submitted by an agent/applicant can be equally assessed without a verbal presentation.

5.0 WHERE WE WANT TO BE

- 5.1 A Planning Committee is sometimes referred to as 'quasi-judicial'. This means that the Planning Committee is required to gather and look at all the evidence before taking a decision on that development. It does not have the powers to stop a development on the basis of it not being popular, the Committee needs to have the law on its side. The Committee looks at all the evidence and the legal requirements for a development. If those legal requirements are met, the Committee cannot turn down a planning application without risking serious consequences (i.e. Judicial Review or costs being awarded following a successful appeal). The members of the Planning Committee must make a decision based on the particular merits (or otherwise) of the proposed development and not just because residents do not want it in their area.
- 5.2 The opinions of the public do matter, however, they must relate to issues that are relevant to the planning application that they are commenting upon. Issues raised such as, "*I don't want his development near me*" or "*It will impact on the value of my property*" are not matters which planning officers can consider. The determining factors have to be 'material considerations.' This is not an exhaustive list, but a 'material consideration' could be:
- the proposal being contrary to Local Development Plan;
 - the adverse impact on highway safety as a result of an inadequate access;
 - the loss of a public open space/green infrastructure;
 - the impact on a listed building or heritage site;
 - the loss of important habitat or impact on protected species;
 - noise and disturbance and loss of residential amenity;
 - flooding issues.

Some Members of this Committee may recall attending a working group with officers (January 2019) which included a session on what is a material planning consideration.

- 5.3 Based on all evidence/information submitted, planning officers will make a recommendation having evaluated all the material considerations. Therefore, just because there is relevant objection to an application, it does not necessarily mean it will be recommended for refusal. As stated above, all relevant material planning considerations are taken into consideration when determining an application and some will outweigh others.
- 5.4 In terms of developing public involvement in the Planning Committee Member's may wish to consider introducing the opportunity for the public to speak at Committee. Other Authorities allow this subject to a strict protocol on the number of speakers, the length of time they can speak for and providing the applicant with the right to reply. It is suggested that an exercise be undertaken in a workshop style which identifies the

pros and cons of introducing such a change. Should Members wish to introduce it, it would have to be debated and agreed by the Planning Regulatory and Licensing Committee as well as Full Council as it would entail a change to the Constitution.

5.5 In terms of the logistics of introducing public/applicant/agent speaking (both virtually and within the Council Chamber), Democratic Services would have to ensure that the necessary processes and procedures are in place, including managing requests to speak and providing a translation service, and ensuring the essential equipment (IT and other) is available. The Planning Committee Chair would have to control the process at Committee.

6.0 CONTRIBUTION TO WELLBEING OBJECTIVES

8.1 Planning contributes to all four objectives:

- Best Start to Life
- Working Life
- Environmental Wellbeing
- Living Well

**JUDITH JONES, CHIEF OFFICER FOR
PLANNING & NEIGHBOURHOOD
SERVICES**

**COUNCILLOR DAVID HUGHES
PORTFOLIO MEMBER FOR PLANNING &
NEIGHBOURHOOD SERVICES**

BACKGROUND PAPERS		
Title of Document(s)	Document(s) Date	Document Location
List the Background documents which have been relied on in preparing the report. E.g. previous minutes of relevant committees	Planning Annual Performance Reports (from 2014 – 2019) Welsh Governments Development Management Quarterly Returns (from 2014 – 2020)	https://www.merthyr.gov.uk/resident/planning-and-building-control/annual-performance/ https://gov.wales/development-management-quarterly-surveys
Does the report contain any issue that may impact the Council's Constitution?		Yes