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NOTICE OF MEETING

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PLANNING & HOUSING OVERVIEW & SCRUTINY PANEL

will meet on

WEDNESDAY, 18TH APRIL, 2018

At 6.30 pm

in the

COUNCIL CHAMBER - TOWN HALL, MAIDENHEAD,

TO: MEMBERS OF THE PLANNING & HOUSING OVERVIEW & SCRUTINY PANEL

COUNCILLORS RICHARD KELLAWAY (CHAIRMAN), MAUREEN HUNT (VICE-CHAIRMAN), MALCOLM BEER, GERRY CLARK, DR LILLY EVANS, LEO WALTERS AND JULIAN SHARPE

SUBSTITUTE MEMBERS

COUNCILLORS CLIVE BULLOCK, SAYONARA LUXTON, ADAM SMITH, LYNDA YONG, CLAIRE STRETTON, JOHN STORY AND EILEEN QUICK

Karen Shepherd –Service Lead- Democratic Services - Issued: Tuesday, 10 April 2018

Members of the Press and Public are welcome to attend Part I of this meeting. The agenda is available on the Council's web site at www.rbwm.gov.uk or contact the Panel Administrator **Nabihah Hassan-Farooq** 01628 796345

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AGENDA

PART I

| <u>ITEM</u> | <u>SUBJECT</u> | <u>PAGE NO</u> |
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| 1. | <u>APOLOGIES FOR ABSENCE</u> To receive any apologies for absence. | - |
| 2. | <u>DECLARATIONS OF INTEREST</u> To receive any declarations of interest. | 5 - 6 |
| 3. | <u>MINUTES</u> To confirm the Part I minutes of the meeting of 7 th March 2018. | 7 - 8 |
| 4. | <u>PLANNING PERFORMANCE</u> To comment and consider on the above report. | 9 - 16 |
| 5. | <u>REVIEW OF PUBLIC SPEAKING AT PANEL FOLLOWING CONCLUSION OF PILOT REPORT</u> To comment and consider the above report. | 17 - 32 |
| 6. | <u>LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN REPORT - 16 003 062</u> To note the above report and recommendations. | 33 - 56 |
| 7. | <u>DATES OF FUTURE MEETINGS</u> The date of the next meeting was to be confirmed. | - |

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MEMBERS' GUIDE TO DECLARING INTERESTS IN MEETINGS

Disclosure at Meetings

If a Member has not disclosed an interest in their Register of Interests, they **must make** the declaration of interest at the beginning of the meeting, or as soon as they are aware that they have a DPI or Prejudicial Interest. If a Member has already disclosed the interest in their Register of Interests they are still required to disclose this in the meeting if it relates to the matter being discussed.

A member with a DPI or Prejudicial Interest **may make representations at the start of the item but must not take part in the discussion or vote at a meeting.** The speaking time allocated for Members to make representations is at the discretion of the Chairman of the meeting. In order to avoid any accusations of taking part in the discussion or vote, after speaking, Members should move away from the panel table to a public area or, if they wish, leave the room. If the interest declared has not been entered on to a Members' Register of Interests, they must notify the Monitoring Officer in writing within the next 28 days following the meeting.

Disclosable Pecuniary Interests (DPIs) (relating to the Member or their partner) include:

- Any employment, office, trade, profession or vocation carried on for profit or gain.
- Any payment or provision of any other financial benefit made in respect of any expenses occurred in carrying out member duties or election expenses.
- Any contract under which goods and services are to be provided/works to be executed which has not been fully discharged.
- Any beneficial interest in land within the area of the relevant authority.
- Any licence to occupy land in the area of the relevant authority for a month or longer.
- Any tenancy where the landlord is the relevant authority, and the tenant is a body in which the relevant person has a beneficial interest.
- Any beneficial interest in securities of a body where:
 - a) that body has a piece of business or land in the area of the relevant authority, and
 - b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body **or** (ii) the total nominal value of the shares of any one class belonging to the relevant person exceeds one hundredth of the total issued share capital of that class.

Any Member who is unsure if their interest falls within any of the above legal definitions should seek advice from the Monitoring Officer in advance of the meeting.

A Member with a DPI should state in the meeting: ***'I declare a Disclosable Pecuniary Interest in item x because xxx. As soon as we come to that item, I will leave the room/ move to the public area for the entire duration of the discussion and not take part in the vote.'***

Or, if making representations on the item: ***'I declare a Disclosable Pecuniary Interest in item x because xxx. As soon as we come to that item, I will make representations, then I will leave the room/ move to the public area for the entire duration of the discussion and not take part in the vote.'***

Prejudicial Interests

Any interest which a reasonable, fair minded and informed member of the public would reasonably believe is so significant that it harms or impairs the Member's ability to judge the public interest in the item, i.e. a Member's decision making is influenced by their interest so that they are not able to impartially consider relevant issues.

A Member with a Prejudicial interest should state in the meeting: ***'I declare a Prejudicial Interest in item x because xxx. As soon as we come to that item, I will leave the room/ move to the public area for the entire duration of the discussion and not take part in the vote.'***

Or, if making representations in the item: ***'I declare a Prejudicial Interest in item x because xxx. As soon as we come to that item, I will make representations, then I will leave the room/ move to the public area for the entire duration of the discussion and not take part in the vote.'***

Personal interests

Any other connection or association which a member of the public may reasonably think may influence a Member when making a decision on council matters.

Members with a Personal Interest should state at the meeting: ***'I wish to declare a Personal Interest in item x because xxx'. As this is a Personal Interest only, I will take part in the discussion and vote on the matter.***

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Agenda Item 3

PLANNING & HOUSING OVERVIEW & SCRUTINY PANEL

WEDNESDAY, 7 MARCH 2018

PRESENT: Councillors Richard Kellaway (Chairman), Maureen Hunt (Vice-Chairman), Malcolm Beer, Gerry Clark, Leo Walters and Julian Sharpe

Also in attendance: Councillor David Hilton

Officers: Russell O'Keefe, Jenifer Jackson and Nabihah Hassan-Farooq

APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Dr L Evans.

DECLARATIONS OF INTEREST

None.

MINUTES OF MEETING HELD ON THE 1ST FEBRUARY 2018

Resolved UNANIMOUSLY That: The minutes of the meeting held on the 1st February 2018 were agreed.

(Cllr Hunt abstained from this vote as she was not in attendance of the previous meeting.)

TASK AND FINISH GROUP- PLANNING SERVICE

The Chair introduced the item and told the Panel that he had met with Jenifer Jackson, Head of Planning and Russell O'Keefe, Executive Director to discuss the task and finish group. It was outlined that the task and finish group would be designed to contribute to the ongoing constitutional changes and arrangements and make recommendations. Members were also informed that the group would look at the effectiveness of the Planning Department and its processes in detail.

Jenifer Jackson stated that comments from Senior Officers and the Managing Director had been made but had not been incorporated into the final report due to time limitations.

The Membership of the task and finish group was discussed and agreed that Councillors Kellaway, Sharpe, Hunt and Beer would be the selected cohort for the group. It was discussed that the composition would be formed of 3 majority members and 1 opposition member. Members discussed the need for wider councillors participation and expertise. The Panel were reminded that Lead and Principal members would be marked as "in attendance" and not as Members of the task and finish group. It was also highlighted that action notes would be produced and circulated to the group due to the frequency of meetings.

It was agreed that Councillor Hilton would attend the upcoming task and finish group.

Resolved UNANIMOUSLY That; Councillors Kellaway(Chair), Hunt (Vice- Chair), Sharpe and Beer would form the membership of the Planning and Housing- task and finish group.

At the conclusion of the Planning and Housing Overview & Scrutiny Panel, the first task and finish group convened.

DATES OF FUTURE MEETINGS

Members noted that the next Planning and Housing Overview & Scrutiny Panel would take place on the 18th April 2018 at 6.30pm.

The meeting, which began at 6.01 pm, finished at 6.18 pm

CHAIRMAN.....

DATE.....

| | |
|--|---|
| Report Title: | Planning Performance |
| Contains Confidential or Exempt Information? | NO - Part I |
| Member reporting: | Councillor Airey, Deputy Lead Member for Planning |
| Meeting and Date: | Planning and Housing Overview and Scrutiny, 18 April 2018 |
| Responsible Officer(s): | Russell O'Keefe, Executive Director Place & Jenifer Jackson, Head of Planning |
| Wards affected: | All |

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REPORT SUMMARY

- 1 The report is to update the Panel on planning performance since the implementation of an improvement plan within the service and as a follow up from the last report to this Panel in November 2017. The aim of the improvement plan was to consistently meet the national targets for the determination of planning applications.

1 DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Planning and Housing Overview & Scrutiny Panel

- (i) notes the report and the continued improved performance in the determination of planning applications; and
- (ii) Requests the Task & Finish Group to review the operation of delegated authority in relation to enforcement and other notices.

2 REASON(S) FOR RECOMMENDATION(S)

- 2.1 The Chair of the Panel requested a report on planning performance, this was presented to the Panel in November 2017. At that meeting the Panel requested a further update on performance from the Head of Planning for the meeting scheduled for 18 April 2018. Previously the Panel was provided with the statutory basis on which the Government criteria for assessment and designation is set.
- 2.2 The Council is required to make statutory returns to Government each quarter; this data is then used by Government to publish performance tables. These are called PS1 and 2 returns. PS1 returns relate to major, minor and other planning applications; minerals and waste applications are captured separately as County Matters and then PS2 captures the rest of the applications which a planning authority would determine.
- 2.3 The Council's Performance Monitoring Framework captures the major, minor and other applications categories and also performance on planning appeals.

2.4 The following tables show the performance in each of these categories over the years 2015-16, 2016-17 and 2017-18. This updates the November 2017 report.

| | | 2015-2016 | | | | |
|---|--|-----------|--------|--------|--------|--------|
| | | Q1 | Q2 | Q3 | Q4 | YEAR |
| Major Planning applications - in target (60%) | | 5 | 4 | 10 | 14 | 33 |
| Total Major Planning Applications | | 8 | 8 | 15 | 18 | 49 |
| Performance | | 62.50% | 50.00% | 66.67% | 77.78% | 67.35% |
| Minor Planning applications - in target (65%) | | 44 | 49 | 47 | 83 | 223 |
| Total Minor Planning Applications | | 104 | 116 | 102 | 121 | 443 |
| Performance | | 42.31% | 42.24% | 46.08% | 68.60% | 50.34% |
| "Other" Planning applications - in target (80%) | | 241 | 194 | 187 | 327 | 949 |
| Total "Other" Planning Applications | | 376 | 377 | 319 | 409 | 1,481 |
| Performance | | 64.10% | 51.46% | 58.62% | 79.95% | 64.08% |

| | | 2016-2017 | | | | |
|---|--|-----------|--------|--------|--------|--------|
| | | Q1 | Q2 | Q3 | Q4 | YEAR |
| Major Planning applications - in target (60%) | | 14 | 16 | 10 | 15 | 55 |
| Total Major Planning Applications | | 17 | 23 | 13 | 19 | 72 |
| Performance | | 82.35% | 69.57% | 76.92% | 78.95% | 76.39% |
| Minor Planning applications - in target (65%) | | 73 | 69 | 53 | 45 | 240 |
| Total Minor Planning Applications | | 98 | 103 | 73 | 72 | 346 |
| Performance | | 74.49% | 66.99% | 72.60% | 62.50% | 69.36% |
| "Other" Planning applications - in target (80%) | | 322 | 326 | 255 | 229 | 1,132 |

| | | | | | |
|-------------------------------------|--------|--------|--------|--------|--------|
| Total "Other" Planning Applications | 398 | 382 | 310 | 309 | 1,399 |
| Performance | 80.90% | 85.34% | 82.26% | 74.11% | 80.91% |

| | 2017-2018 | | | | |
|---|-----------|--------|--------|--------|--------|
| | Q1 | Q2 | Q3 | Q4 | YEAR |
| Major Planning applications - in target (60%) | 7 | 11 | 18 | 11 | 47 |
| Total Major Planning Applications | 10 | 12 | 20 | 12 | 54 |
| Performance | 70.00% | 91.67% | 90% | 100% | 87.04% |
| Minor Planning applications - in target (65%) | 69 | 79 | 72 | 101 | 321 |
| Total Minor Planning Applications | 105 | 114 | 91 | 138 | 448 |
| Performance | 65.71% | 69.30% | 79.12% | 71.43% | 71.65% |
| "Other" Planning applications - in target (80%) | 283 | 343 | 256 | 305 | 1187 |
| Total "Other" Planning Applications | 384 | 412 | 289 | 375 | 1459 |
| Performance | 73.70% | 83.25% | 88.58% | 78.40% | 81.36% |

2.5 As explained to the Panel in November 2017 through the current year 2017-18 the focus has been on consolidating improved performance and system improvements. The service has ended the year above target for all of the Key performance indicators related to planning application decisions. Over the course of 2018/19 the service plan is focused on further improvements to achieve higher performance which is more in line with the national average for a unitary authority of applications in time for majors 86%, minors 82% and other applications 89%.

2.6 Since January 2018 the development management side of the service has been, with the exception of two posts, staffed with permanent team members. Those two posts are currently backfilled and out to recruitment, interviews have taken place and verbal offers accepted. It is proposed the additional funding for the capacity contract will come from the 20% increase in planning application fees enacted in January 2018 and legally required to be ringfenced to fund improvements in the planning service.

Planning Enforcement

2.7 The Deputy Lead Member for Planning has been engaged in discussions with the Planning Enforcement & Conservation Team Manager and the Deputy Head

- of Planning in relation to ongoing improvement work in planning enforcement. This is in response to a number of complaints about the timeliness of the responses provided to those making allegations of breaches of planning control.
- 2.8 The outcome of those discussions is for the enforcement team to focus on three areas: communication with third parties including engagement with Parish Councils, a review of the local enforcement plan which was adopted in 2016 and a review of delegated authority through the planning task and finish group.
- 2.9 The Enforcement Team has also been asked to consider whether to issue more press releases when the council is successful in prosecuting breaches of planning control; it is considered that this could act as a deterrent to others which would be of assistance.

Planning Appeals

- 2.10 As reported previously the performance indicator for planning appeals is that less than 20% of planning appeals should be allowed. This has been a target which has challenged the Council for the last 3 years. The published improvement plan last year required that a programme of Member training be conducted alongside more detailed Part 2 reports to Members on the consequences of decisions taken by Planning Panels. These actions have been completed.
- 2.11 In the year to date there has been 116 appeal decisions. 99 of these have been based on decisions made at delegated level and 17 based on panel decisions. Out of the 116 decisions 41 have been allowed at appeal, 69 dismissed, 4 part allowed and 3 appeals withdrawn. This gives 35% of appeals allowed against a target of 20%. Looking at the delegated and Panel decisions the percentage split is the same irrespective of the decision level. Previously Members have requested to see the decisions split by Panel, this is set out below:

| Panel | Appeals allowed | Appeals dismissed | Withdrawn | Percentage of appeals allowed against Panel total |
|---------------|-----------------|-------------------|-----------|---|
| Maidenhead | 3 | 6 | 2 | 27% |
| Windsor Rural | 2 | 2 | 0 | 50% |
| Windsor Urban | 1 | 2 | 0 | 33% |

- 2.12 As an authority the number of applications appealed is low, only 5.9% of decisions appealed in 2017/18. The decisions are reviewed on receipt in order for officers to understand whether there is a basis for seeking to challenge a decisions; whether a policy is being misapplied or badly interpreted by officers and any change required or any other issue that is consistently resulting in appeals being allowed. There is no pattern other than decisions being taken against an out of date plan base and the absence of basic guidance around assessing planning applications, for example, lack of guidance on separation distances between properties. The Council is looking to progress a Borough Design Guide SPD to pick up on this issue.
- 2.13 Government has introduced a new 'experimental' statistic based on the performance of local planning authorities against the published criteria for assessing under-performance under section 62B of the Town and Country

Planning Act 1990. For the quality of decisions, the statistics show the overall figure for planning applications determined in the assessment period of 24 months to the end of March 2017 (and subsequent appeal decisions to the end of December 2017). The 2018 threshold for designation is 10% or more of an authority's decisions on applications for major development made during the assessment period, including those arising from a 'deemed refusal', being overturned at appeal. For RBWM the rolling two year performance figure for district matter major applications is 4.8% as at January 2018; for county matter applications (minerals and waste) is 0%. This is one of the live data sets for planning published by Government and compiled from the data returns made by Councils across England.

- 2.14 A number of appeals have also been subject to costs decisions over this financial year. Costs can be sought on any appeal if the appellant considers that the Council has acted unreasonably or has failed to substantiate the refusal reasons applied to a decision. Costs have been awarded against the Council in a number of cases over the financial year, due to the process involved in reaching agreement over costs incurred it can take some time to settle these claims. To date this year the Council has paid out around £25,000 in costs awarded at appeal.

Legal Challenges

- 2.15 The Council has had one legal challenge to a decision made in this year. This related to an application which was approved and residents were given leave by the High Court to challenge that decision. Officers sought advice from Counsel and, based on that advice, the Head of Law & Governance agreed to a Consent Order which resulted in the decision being quashed. The Council therefore reconsidered the planning application. Costs were incurred in that process amount to around £15,000.

Formal Complaints

- 2.16 In the last reporting year for corporate complaints there were 99 complaints in relation to the planning service; this is reported annually. It would be fair to say that the number of complaints was high due to a combination of factors which included, but is not limited to, resource of the development management and enforcement teams and the speed in processing planning applications and complaints relating to alleged breaches of planning control. Those majority of those complaints which have been upheld in the last 12 months related to the timeliness of actions in accordance with published procedure.
- 2.17 In 2017/18 additional resource was added to the enforcement team and the service was also permitted to recruit a deputy head of service; the deputy head of planning leads on stage 1 complaints. Currently the service has 3 outstanding stage 1 complaints and one complaint which is with the Local Government Ombudsman to which information has to be provided. This represents a much improved position and a reduction in the number of complaints received by the service.

3 KEY IMPLICATIONS

- 3.1 Planning performance is measured corporately against the national indicators for planning performance set by Government through the Department for

Communities and Local Government. Failure to meet the national targets can result in being designated as a standards authority.

4 FINANCIAL DETAILS / VALUE FOR MONEY

4.1 None.

5 LEGAL IMPLICATIONS

5.1 None.

6 RISK MANAGEMENT

6.1 An internal process is in place to manage the risk around planning decision making. This is covered in the corporate risk register.

7 POTENTIAL IMPACTS

7.1 None arising from this report.

8 CONSULTATION

- None.

9 APPENDICES

None.

10 BACKGROUND DOCUMENTS

<https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics#local-planning-authority-performance-tables>

11 CONSULTATION (MANDATORY)

| Name of consultee | Post held | Date sent | Commented & returned |
|--------------------------|--------------------|------------------|---------------------------------|
| Cllr Coppinger | Lead Member | 29.03.18 | 3.4.18 |
| Cllr M Airey | Deputy Lead Member | 29.03.18 | 6.4.18 |
| Alison Alexander | Managing Director | 29.03.18 | 3.4.18 |
| Russell O'Keefe | Executive Director | 26.03.18 | 29.03.18 |

REPORT HISTORY

| | |
|--|----------------------------|
| Decision type: For information | Urgency item? No |
| Report Author: Jenifer Jackson, Head of Planning, 01628 796042 | |

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| | |
|--|--|
| Report Title: | Pilot on Public Speaking Rights at Planning Panels. |
| Contains Confidential or Exempt Information? | NO. |
| Member reporting: | Councillor Kellaway Lead Member for Planning incl Health & Sustainability |
| Meeting and Date: | Planning and Housing Overview & Scrutiny Panel, 18 April 2018 |
| Responsible Officer(s): | Russell O’Keefe, Executive Director, Place & Jenifer Jackson, Head of Planning |
| Wards affected: | All |

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REPORT SUMMARY

- 1 This report follows a pilot conducted on public speaking rights to planning panels. This followed a report to Full Council in September 2014 which proposed changes to public speaking rights, it was agreed to pilot those changes and report back to Planning and Housing Overview & Scrutiny before making any final changes to the Constitution.
- 2 The report sets out any learning from the pilot and proposes next steps.

1 DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That the Planning and Housing Overview & Scrutiny Panel notes the report and proposes that:

- i) The public speaking right pilot is concluded
- ii) The recommendations set out within this report are taken forward via the Planning Task & Finish Group to Full Council in a report to Council proposing formal amendments to the Constitution that secures the following changes:
 - a. Village Design Statements are not development plan documents and are not recognised as being similar to neighbourhood plans
 - b. Once a Neighbourhood Plan has been adopted, a neighbourhood plan steering group or successor group or constituted interest group operating in the locality ceases to qualify for public speaking
- iii) Only Parish Council’s retain the separate right to speak at a Development Management Panel meeting save for those parts of the Borough which are non-parished and for which, once their plan is made, the Neighbourhood Forum should have the right to speak.

2 REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 2.1 In September 2014 Council agreed a pilot for changes to public speaking rights at Planning Panels. A review of the pilot has now been undertaken.

Table 1: Options

| Option | Comments |
|---|---|
| Based on the review of the pilot propose further changes to public speaking rights at Panel | Learning from the pilot has informed the recommendations of this report as set out in detail below. |

| Option | Comments |
|---|---|
| This is the recommended option. | |
| Make no changes to the Constitution as currently set out, based on learning from the pilot. This is not the recommended option. | If no changes are made then non accountable local bodies will retain the right to speak in addition to democratically elected Parish Councils and representors which will tip the balance in terms of equity of those able to speak for and against a proposal. |
| Carry out a fundamental review of speaking rights at Planning Panel using learning from other authorities. This is not the recommended option. | It is not considered that this is required. A review of the pilot and proposed way forward should suffice. |

Background

- 2.2 The pilot to test the changes made to public speaking was implemented in 2014 when neighbourhood planning was a relatively new level of plan making. Prior to that date applicants/their agents, parish council and those making representations had been entitled to speak at DM Panel meetings providing that they registered to do so by a set deadline. In 2014 the Ascot & Sunnings Neighbourhood Plan had been made (adopted) as the first Neighbourhood Plan in the borough and a number of other groups were working on drafting plans. The stated purpose of the changes to public speaking to provide for residents groups formed as a consequence of the adoption of a neighbourhood plan to speak was that it would “*ensure continuity of neighbourhood plan groups from preparing their plans and seeing them adopted.*”
- 2.3 Equally in relation to the introduction of public speaking by any resident group or commercial interest group at Panels following the adoption of a Neighbourhood Plan or equivalent which was considered to “*ensure that local interest groups have the opportunity to influence planning decision making in a public and transparent way*”.
- 2.4 The consideration in the report to Council at the time was that to not extend speaking rights as recommended, and trialled, was to not ensure continuity in plan making at a local level. This is not expanded on within the report to Council.

Neighbourhood Plan, or similar:

- 2.5 A Neighbourhood Plan is a development plan document which has a statutory basis set out in the Localism Act 2011. It is based on a designated area identified formally and legally through a Neighbourhood Forum; in parish areas this would be the Parish Council. It is based on evidence, goes through a number of consultation stages, it is formally examined; and, after a referendum in which the majority of residents endorse using it for making planning decisions, it can be adopted by the Council. It is then adopted planning policy which forms part of the Development Plan for the Borough.
- 2.6 A Village Design Statement is a Supplementary Planning Document. It relies upon a local plan policy on which to ‘hang’ the guidance contained therein. A VDS would usually be produced by a Parish Council, working with other parties, and the Council will then take it through a formal consultation process. The Council is then entitled to adopt

a VDS as a supplementary document offering detailed guidance on how development might be assessed in that village. A VDS is not a policy document.

- 2.7 It is concluded that a Neighbourhood Plan, as planning policy, has no comparable other than a local plan document. It is recommended therefore that speaking rights only apply in those areas of the Borough where a Neighbourhood Plan is being produced or has been made. This will be considered further below.

Speaking rights for Neighbourhood Plan Groups and Successor Groups

- 2.8 It should be made clear that speaking rights previously existed for Parish Councils alone; a parish council may still register to speak on an application falling within its parish area.
- 2.9 For the majority of the period since the changes were introduced in 2014 there has only been one made Neighbourhood Plan (NP) for Ascot & the Sunnings. In that plan area two parishes were brought together in a designated area and between them set up a neighbourhood plan steering group. The group was responsible for producing the plan. Once the plan was made (adopted) it has become 'owned' by the Borough Council to implement the policies through decision making on planning applications. At this point the parish council formed steering group would cease to exist as their hard work has been completed.
- 2.10 Until late 2018 a successor organisation known as the Ascot and Sunnings Neighbourhood Plan Delivery Group had been making comments on planning applications, submitting statements in relation to planning appeals and appearing at the Windsor Rural development management Panel to speak. Sometimes the Delivery Group mirrored the comments of the parish council and other times they did not. More recently the Delivery Group has not attended meetings to speak and makes few comments on applications.
- 2.11 The Parish Councils for that plan area continue to comment on applications with reference to the policies in the Neighbourhood Plan and to speak at meetings in the same regard.
- 2.12 The Borough has one other made plan currently covering Hurley and the Walthams. Again this was produced by a steering group made up of representatives from the three parish councils/parish meetings for which the designated area was formally identified. Following the examination of that plan the steering group was disbanded. The relevant parish councils' are now engaged in commenting on applications with reference to policies in that NP.
- 2.13 It is considered that the speaking rights and time identified for Parish Councils which can be used to address the Panel and point out issues of fact with reference to policy, or interpretation of policy and the background to it being developed, provides the continuity to plan making. The Parish Councils are elected to represent their local populace whilst 'successor organisations' are not so accountable or elected.

Non-parished areas of the Borough

- 2.14 In this Borough there are two areas which are not within a Parish: Windsor and Maidenhead. It is recommended that, in these areas, speaking rights should be given to a formally constituted Neighbourhood Forum when their plan has been made. Within Windsor there are two active plan making groups, Windsor 2030 producing a business led plan and Windsor Neighbourhood Plan producing a resident led plan for the area outside of the main town centre.

Public speaking for any resident group or commercial interest group

- 2.15 When public speaking was first introduced by the Council in relation to planning panels there was a provision for those making representations to a proposal to speak. The procedure for registering to speak is long established and operates on a first come, first served basis with the option for those securing the right to speak sharing the time with others who are also interested in being heard. It included the option for local interest groups to register, the Society for the Protection of Ascot and its Environs is a good example of a local group which has long been commenting on applications and taking up the rights to appear in person to set out the representations from their membership.
- 2.16 The trial allowed for an extension of rights thus giving parish councils, neighbourhood plan groups or successor groups and local resident groups time to speak, cumulatively for 6 minutes (2 minutes per group). The applicant has 3 minutes and the representors have 3 minutes. The report to Cabinet in September 2014 noted that one of the implications of the trial is the impact on natural justice as the balance of views voiced may no longer be the same. As that report contained no review of the process that had been operating to that point there is no indication of it having been unsatisfactory to any party. Having reviewed the available documentation it is considered that the trial was simply to offer the opportunity for more local groups and people to be able to speak at the Panel meeting rather than observe proceedings.

The Panel decision: Section 38(6) of the Planning Act

- 2.17 It is beholden on the planning authority, whether that is a Panel of Members or an officer acting under delegated powers, to reach a decision on each and every planning application on its own merits and in accordance with the policies in the Development Plan unless material considerations indicate otherwise. The Officer report clearly sets out the relevant policies, including those of a Neighbourhood Plan. The report also includes comments from the parish council and other groups together with comments received from individual residents noting how this has been dealt with in the report and whether or not it is a material planning matter. The number of representations made is not material to reaching a decision, it is the issues raised by representors which are considered.
- 2.18 The report to Council set out that the basis for the trial, in part, was to allow groups to influence the planning decision in a transparent and open way. All stakeholders have the opportunity to make representations on a planning proposal through the statutory consultation period, there is no need to speak publicly to the Panel to engage that right. Those written representations received are all recorded on a public (electronic) file and referenced in the officer report. Late representations received before the Panel meetings are also reported in a written update circulated at the meeting.

3 KEY IMPLICATIONS

- 3.16 The proposed revisions contained within this report require formal Council approval as they are changes to the Council Constitution. It is recommended that this Panel makes recommendations via the Constitution Working Group to Full Council to implement the changes set out.

Table 2: Key implications

| Outcome | Unmet | Met | Exceeded | Significantly Exceeded | Date of delivery |
|--|--|--|---|--|-------------------------|
| Report to Council setting out proposed changes to the Constitution | Report considered by Council in September 2018 | Report considered by Council in July 2018 | Report considered by Council in June 2018 | Report considered by Council in May 2018 | July 2018 |
| Implementation of constitutional changes | Changes take effect after 1 October 2018 | Changes take effect from 30 September 2018 | Changes take effect on 1 September 2018 | Changes take effect from 30 July 2018 | September 2018 |

4 FINANCIAL DETAILS / VALUE FOR MONEY

4.16 None.

5 LEGAL IMPLICATIONS

5.16 The Planning Practice Guidance covers the legal basis for consulting in writing with groups and statutory and no statutory bodies as part of the planning process; the weblinks to this information are contained in section 10.

5.17 Speaking at Panel is not set out in legislation but contained in the Council's own Constitution. The council has the power to amend speaking rights. If changes are sought to the Constitution and agreed there will be a consequent need to amend the Council's adopted Statement of Community Involvement. This document will need updating later this year in any event due to legislation changes relating to the rights to be consulted on a planning application where a Neighbourhood Plan has been made.

6 RISK MANAGEMENT

Table 4: Impact of risk and mitigation

| Risks | Uncontrolled Risk | Controls | Controlled Risk |
|---|--------------------------|---|------------------------|
| Reputational risk of non accountable local groups perceiving that they are not able to engage in the planning process | Medium | Direct local groups towards information on the Council website which explains how they can engage in the planning process | Low |
| The outcome is not met through changes to the Council constitution | Medium | Proceed through the planning task and finish group or via Council to make changes to | Low |

| Risks | Uncontrolled Risk | Controls | Controlled Risk |
|--------------|--------------------------|------------------|------------------------|
| | | the Constitution | |

7 POTENTIAL IMPACTS

None.

8 CONSULTATION

None.

9 APPENDICES

The appendices to the report are as follows:

Appendix 1 Report to Council 23 September 2014

10 BACKGROUND DOCUMENTS

<https://www.gov.uk/guidance/consultation-and-pre-decision-matters>

<https://www.gov.uk/guidance/consultation-and-pre-decision-matters#Statutory-consultees>

<https://www.gov.uk/guidance/consultation-and-pre-decision-matters#Statutory-consultees-on-applications>

Parish Council as statutory consultee

<http://www.legislation.gov.uk/ukxi/2015/595/schedule/4/made>

11 CONSULTATION (MANDATORY)

| Name of consultee | Post held | Date issued for comment | Date returned with comments |
|--------------------------|--------------------------|--------------------------------|------------------------------------|
| Cllr Coppinger | Lead Member for Planning | 29.3.18 | 3.4.18 |
| Alison Alexander | Managing Director | 29.3.18 | 4.4.18 |
| Russell O'Keefe | Executive Director | 29.3.18 | 3.4.18 |
| Andy Jeffs | Executive Director | 29.3.18 | 3.4.18 |
| Rob Stubbs | Section 151 Officer | 29.3.18 | 3.4.18 |

REPORT HISTORY

| | | |
|--|----------------------------|-------------------------------|
| Decision type: Key decision For information | Urgency item? No | To Follow item? n/a |
| Report Author: Jenifer Jackson, Head of Planning, 01628 796042 | | |

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| |
|-----------------------|
| Report for: ACTION |
| Item Number: 11 |

| | |
|--|---|
| Contains Confidential or Exempt Information | NO – Part I |
| Title | Constitution Amendments – Neighbourhood Plans |
| Responsible Officer(s) | Simon Hurrell – Head of Planning |
| Contact officer, job title and phone number | Suki Coe – Development Control Manager (01628) 796042 |
| Member reporting | Councillor Derek Wilson, Lead Member for Planning Councillor Christine Bateson, Lead Member for Community Partnerships and Neighbourhood Plans |
| For Consideration By | Planning and Housing Overview and Scrutiny Panel, and Full Council (Constitution Sub-Committee) |
| Date to be Considered | 23 September 2014 |
| Implementation Date if not Called In | October 2014 |
| Affected Wards | All |
| Keywords/Index | Non-Statutory Consultees, Neighbourhood Planning, Development Control Panels |

Report Summary

1. To establish the role and status of successor residents' groups involved in neighbourhood planning following the adoption of neighbourhood plans and how they engage in the Development Control decision making process.
2. To consider the mechanisms available to such residents' groups to ensure that there is open and transparent engagement in the decision making process at Development Control Panel meetings following the adoption of a Neighbourhood Plan.
3. To consider how best other residents' groups across the Royal Borough can engage in the decision making process at Development Control Panel meetings following the adoption of a Neighbourhood Plan or equivalent.
4. To suggest amendments to Part 7 of the Council's Constitution as a result of the above considerations.

If recommendations are adopted, how will residents benefit?

| | |
|---|-------------|
| Local residents engaged in the production of adopted neighbourhood plans will have continuity of involvement in the implementation of their plans, including being consulted on planning applications and speaking at Development Control Panels as of right. | Immediately |
| Councillors on Development Control Panels will be aware of local residents views and ambitions regarding the adopted Neighbourhood | Immediately |

| | |
|---|--|
| Plan | |
| Local residents' groups with particular interests in relevant local matters will, at the discretion of the Chairman, be able to speak at Development Control Panels once a Neighbourhood Plan or equivalent has been adopted in their area. | Following adoption of a Neighbourhood Plan |
| Decision making will be clearly accountable | Immediately |

1. Details of Recommendations

RECOMMENDATION:

1. That following the adoption of a neighbourhood plan or equivalent by the Royal Borough (a) local residents are empowered to form a formally constituted body to oversee its implementation (b) that body becomes a non-statutory consultee within the planning process on all applications relating to their neighbourhood plan area and (c) the new body is entitled as of right to speak at the appropriate development control panel.
2. That following the adoption of a Neighbourhood Plan or equivalent, other *bona fide* residents' groups, properly constituted and with genuine local interests, may also be entitled to speak.
3. The time allocated will be two minutes in total and will be shared if there is more than one group speaking in the neighbourhood plan slot.
4. That appropriate amendments are made to the Council's Constitution as set out in Appendix A to the report.

2. Reason for Recommendation and Options Considered

Neighbourhood plan successor groups

- 2.1 The adoption of the Ascot, Sunningdale and Sunninghill Neighbourhood Plan brings to a close the work of the Neighbourhood Plan Steering Group. In the Localism Act 2011 (the legislation that created neighbourhood planning), there is no authority to accommodate any continuation of the plan making group and it has been legally dissolved. However, there is local support in the Ascot and Sunnings area for a new succession group (the Neighbourhood Plan Delivery Group) to be created to oversee the implementation of the Neighbourhood Plan and, in part, to hold the Royal Borough to account in ensuring that its planning decision-making properly reflects the adopted Neighbourhood Plan. A concern has been raised that a neighbourhood plan successor group could use up public speaking time at development control panels which might deny residents or other groups the opportunity to speak. That is why it is suggested that the successor groups have their own allotted 'slot'.
- 2.2 It is suggested that whatever principle is considered for the Ascot Sunningdale and Sunninghill Neighbourhood Plan area should apply to all areas in the Royal Borough once the relevant neighbourhood plan is adopted by the Council. There are ten other such plans. The successor groups would have three distinct roles:
 - To engage locally in the consultation and review of any development briefs resulting from the implementation of the Neighbourhood Plan policies

- To act as non-statutory consultees on any planning application submitted within the Neighbourhood Plan area, and
- To have the right, as they so wish, to address the relevant development control panel on any planning application on that panel's agenda, and to be offered a regular speaking 'slot' at panel meetings.

2.3 Once constituted the Council will add the local neighbourhood plan successor groups to its non-statutory consultee list and will consult, via the circulation of the weekly planning applications list, each body on planning applications and policy development matters in their area. The body can also engage in the assessment of development briefs that result from the adoption of neighbourhood plan policies and can act to ensure local consultation is robust.

2.4 It is accepted that the neighbourhood plan succession groups may also take a lead in the delivery of some of the key projects or policies contained in the adopted neighbourhood plan. Their potential role will have been set out in the implementation section of the adopted plan. They will work with the Royal Borough, landowners and their local communities in the planning and delivery of these schemes and policies. The Ascot and Sunnings Neighbourhood Plan has that provision.

Other representative residents' groups and public speaking

2.5 Provided there is an adopted Neighbourhood Plan or equivalent, it is also suggested that throughout the Royal Borough, residents groups which are constituted in line with the requirements of the Localism Act, which have a particular interest in planning matters, and which have strong community interests – for example , the Cookham Society, the Society for the Protection of Ascot and Environs,– should also have the opportunity to address development control panels as they so wish. This would be at the discretion of the panel chairman.

2.6 In each case, whether a neighbourhood plan successor group or residents' group, when registering to speak the group will be asked whether it wishes to speak for or against an application. This is to ensure a proper balance of speaker time is set. If more than one local resident group wishes to speak they will be asked to share the time available or select a spokes person to speak for them collectively.

Status and role of a local residents' group

2.7 In order for a local group to be an 'accountable' body which can be afforded weight in the planning process, whether a neighbourhood successor body or another residents' group, it would need to be set up on a formal basis and be able to demonstrate accountability. It would also need to be very clear that it is not a rival parish body. Therefore it would need to have a clear scope in terms of its roles and accountabilities. This would be achieved through a local constitution:

- The local group would need to have at least 21 members
- It should be formally constituted
- It should have a published scope and remit
- It should have a published committee programme taking decisions and making representations.

These criteria accord with the requirements of the Localism Act 2011. It is acknowledged of course that many such organisations pre-date the Localism Act

enactment, but the principle is to ensure that only *bona fide* organisations, with genuine local interest and foundation, can take speaker time at panel meetings.

What amendments are requested to be made to the Constitution?

2.8 The Constitution of the Royal Borough of Windsor and Maidenhead is a single point of reference which contains the principal operating structures and procedures of the Authority. It sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Part 7 of the Constitution sets out the process that is followed to allow the public to address development control panels, and this may need amending to accommodate an opportunity for a local residents' representation group to address the panel.

Suggested amendments are set out at Appendix A.

2.10 The council cannot reduce the agendas on development control panels, which are set as a consequence of the size and complexity of applications or the requirement of a ward member or the Head of Planning to call applications in to be considered by a panel rather than under delegated authority. Council will be aware that the Planning Service is obliged to deal with planning applications within time limits prescribed by regulation – 8 weeks for most applications, 13 weeks for major applications.

| Option | Comments |
|--|---|
| <p>1. Approve the introduction of extended consultation with residents groups that are formed as a consequence of the adoption of a neighbourhood plan as part of the planning application process, and to permit those groups to speak at Development Control Panels, and to amend the Constitution accordingly</p> <p>2. Approve the introduction of public speaking by any resident group or commercial interest group at Development Control Panels following the adoption of a Neighbourhood Plan or equivalent, and to amend the Constitution accordingly</p> <p>Preferred recommendation</p> | <p>Ensures continuity of neighbourhood planning groups from preparing their plans and seeing them adopted. Helps provide local accountability for the delivery of neighbourhood policies and projects.</p> <p>Ensures local interest groups have the opportunity to influence planning decision making in a public and transparent way.</p> |
| <p>3. Do not approve changes</p> | <p>Does not ensure continuity of plan making and plan implementation at the local level.</p> |

3. Key Implications

| Defined Outcomes | Unmet | Met | Exceed | Significantly Exceeded | Date they should be delivered by |
|---|--|--|--------|------------------------|----------------------------------|
| Amend the Constitution by 30 October 2014 | Do not amend the Constitution by 30 October 2014 | Amend by the 30 th October 2014 | n/a | n/a | 1 st November 2014 |

4. Financial Details

None.

5. Legal Implications

The Constitution must be in compliance with the Local Government Act 2000, Local Government and Public Involvement in Health Act 2007 and Local Democracy, Economic Regeneration and Construction Act 2009, Localism Act 2011 and any statutory guidance issued in relation to those and other Acts.

The introduction of additional consultations does not raise any legal issues. However, the introduction of additional public speaking will have implications for the quasi judicial planning process and principles of natural justice as the balance of views voiced may no longer be maintained.

6. Value for Money

None

7. Sustainability Impact Appraisal

There is no impact on sustainability objectives.

8. Risk Management

| Risks | Uncontrolled Risk | Controls | Controlled Risk |
|--|-------------------|--|-----------------|
| There is a risk of challenge if the consultation process is not robust, as different groups operate on different remits across the Borough, the process is complex and risk or error is high. There is a risk of challenge if the process of decision making does not ensure the principles of fairness and natural justice. Incorrect consultation processes, un fairness in the process allowing one view to carry more weight because it is expressed | HIGH | Introduce additional consultation to formally constituted neighbourhood plan successor groups and other residents" groups as appropriate. Ensure formal registration process through Democratic Services. Chairman to use discretion to ensure balance of views is maintained. Revised Constitution available on website. | LOW |

| | | | |
|------------------------------|--|--|--|
| numerous times creating bias | | | |
|------------------------------|--|--|--|

9. Links to Strategic Objectives

The main links are to:

Residents First

- Improve the environment, economy and transport

Value for Money

- Deliver economic services
- Invest in the future

Delivering Together

- Enhanced Customer Services
- Deliver Effective Services

Equipping Ourselves for the Future

- Changing our culture

10. Equalities, Human Rights and Community Cohesion

It has been considered that the proposed amendments to the Constitution do require a full EQIA. Elements of the Royal Borough's community may be unable to participate in this process and become marginalised, particularly those who do not agree with the interpretation of a given neighbourhood plan or other policy or who do not have English as their first language.

11. Staffing/Workforce and Accommodation implications

None

12. Property and Assets

None

13. Any other implications

None.

14. Consultation

None.

15. Timetable for Implementation

By 30th October 2014. It is suggested a 6 month trial is introduced if additional public speaking is agreed with a review reported back to O&S for Housing and Planning before the trial ends.

16. Appendices

None

17. Background Information

None

18. Consultation (Mandatory)

| Name of consultee | Post held and Department | Date sent | Date received | See comments in paragraph: |
|--------------------|---|------------|------------------------------------|----------------------------|
| Internal | | | | |
| Cllr Burbage | Leader of the Council | 08/08/2014 | 08/09/14 | |
| Mike McGaughrin | Managing Director | 08/08/2014 | | |
| Simon Hurrell | Head of Planning and Property | 25/07/2014 | 07/08/2014 09/09/14 | Throughout |
| Cllr D Wilson | Lead Member for Planning | 08/08/2014 | 13/08/2014 09/09/14 16/09/14 | |
| Cllr P Comber | Deputy Lead Member for Planning | 08/08/2014 | 26/08/2014 | |
| Cllr Mrs C Bateson | Lead Member for Community Partnerships and Neighbourhood Planning | 08/08/2014 | 08/09/14 16/09/14 | |
| Maria Lucas | Head of Legal Services | 08/08/2014 | 16/09/14 | |
| Cllr Mrs Quick | Chairman of Windsor Urban Development Control Panel | 08/08/2014 | 14/08/2014 | |
| Andrew Brooker | Head of Finance | 08/08/2014 | | |
| Mark Lampard | Finance Partner | 08/08/2014 | | |

Report History

| Decision type: | Urgency item? |
|----------------|---------------|
| Key decision | No |

| Full name of report author | Job title | Full contact no: |
|----------------------------|-----------------------------|------------------|
| Suki Coe | Development Control Manager | 01628 79 6042 |

APPENDIX A: SUGGESTED AMENDMENTS TO CONSTITUTION

If a neighbourhood plan successor organisation wishes to address a Development Control Panel meeting to speak on any planning application, they should notify Democratic Services by 5 pm two working days before the Development Control Panel of their intention to speak; this will be at the discretion of the Chairman. If Democratic Services are not notified in advance, then the Chairman of the meeting has discretion to allow the organisation to address the meeting. The organisation must be based in the appropriate neighbourhood plan area. The organisation will be allocated two minutes to speak. If more than one group registers to speak, they will be asked to share the single two minute speaking opportunity.

Following the adoption of a Neighbourhood plan or equivalent, should a *bona fide* representative residents' organisation wish to address a Development Control Panel meeting to speak on any planning application, they should notify Democratic Services by 5 pm two working days before the Development Control Panel of their intention to speak; this will be at the discretion of the Chairman. If Democratic Services are not notified in advance, then the Chairman of the meeting has discretion to allow the organisation to address the meeting. The organisation will share the allocated two minute opportunity to speak with any successor Neighbourhood Plan resident group.

| | |
|--|--|
| Report Title: | Local Government & Social Care Ombudsman Report – 16 003 062 |
| Contains Confidential or Exempt Information? | NO - Part I |
| Meeting and Date: | Planning & Housing Overview and Scrutiny Panel - 18 April 2018 |
| Responsible Officer(s): | Andy Jeffs, Executive Director Jacqui Hurd, Head of Library and Resident Services |
| Wards affected: | None |

REPORT SUMMARY

- 1 On the 28 November 2017, the Local Government & Social Care Ombudsman (LGO) issued a draft report to the council following an investigation into a complaint originating in December 2015, against the Royal Borough of Windsor and Maidenhead, ref 16 003 062, finding fault causing injustice, and as a result the LGO made a number recommendations to the council. Officers responded to the draft report and immediately began working on implementing all the recommendations.
- 2 On 15 February 2018, the LGO issued its final report to the council (embargoed until 23 March 2018). The head of service dealt with service improvements in November and it was not until the final report that the relevant Lead Member or Leader were notified on the 26 February 2018. The Lead Member at the time the incident occurred was notified on the 8th March 2018.
- 3 On 23 March 2018, the Local Government & Social Care Ombudsman (LGO) published the report.
- 4 Officers regret and have apologised for any distress that has been caused to Mr X through their actions.
- 5 All the recommendations made by the LGO were accepted at the draft report stage and they were actioned shortly after receipt of the draft report from the LGO on 28 November 2017.
- 6 The council is taking additional steps to ensure the housing service is strengthened, including having the housing enabling and housing options services under the leadership of one Executive Director, investing in a new housing system, developing a new housing strategy, updating the homeless strategy and allocations policy driven by the council's priorities, best practice and taking account of the new requirements from the Homeless Reduction Act.
- 7 In 2016/17, the LGO received 48 complaints about the Royal Borough, of which:
 - Three were incomplete or invalid
 - 20 were referred back for local resolution
 - 12 were closed after initial enquiries
- 8 The remaining 13 resulted in detailed investigations, of which six were upheld and seven were not. This gives the Royal Borough an upheld rate of 46%, which is below the national average of 53%.

1 DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Planning and Housing Overview and Scrutiny Panel notes the report and:

- i) **Notes the actions implemented, following the report, to improve services.**

2 REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 2.1 On the 28 November 2017, the Local Government & Social Care Ombudsman (LGO) issued a draft report to the council following an investigation into a complaint originating in December 2015, against the Royal Borough of Windsor and Maidenhead, ref 16 003 062, finding fault causing injustice, and as a result the LGO made a number recommendations to the council. Officers responded to the draft report and immediately began working on implementing all the recommendations
- 2.2 On 15 February 2018, the LGO issued its final report to the council (embargoed until 23 March 2018). The head of service dealt with service improvements in November and it was not until the final report that the relevant Lead Member or Leader were notified on the 26 February 2018. The Lead Member at the time the incident occurred was notified on the 8th March 2018.
- 2.3 On the 23 March 2018, the Local Government & Social Care Ombudsman (LGO) published the report.
- 2.4 Officers regret and have apologised for any distress that has been caused to Mr X through their actions
- 2.5 In 2016/17, the LGO received 48 complaints about the Royal Borough, of which:
 - Three were incomplete or invalid
 - 20 were referred back for local resolution
 - 12 were closed after initial enquiriesThe remaining 13 resulted in detailed investigations, of which six were upheld and seven were not. This gives the Royal Borough an upheld rate of 46%, which is below the national average of 53%.
- 2.6 If the LGO decide it is in the public interest to highlight issues emerging from an investigation, they will write and publish a public interest report which is the case here. Publishing a public interest report may not, of itself, be a direct judgement on the council and most common reasons for deciding to do so are:
 - There are wider issues from which other authorities could learn
 - What went wrong was so significant or is recurrent
 - The complaint highlights systemic problems within the authority or the wider sector
 - The issues relate to the implementation of new legislation and how authorities have taken this forward.

They will also usually issue a public interest report if an organisation does not agree with the findings or recommendations from their investigation, or put things right to their satisfaction.

- 2.7 Mr X left his family home on 8 December 2015 following the breakdown of his marriage. The same month he asked the council for help with housing as he was homeless.
- 2.8 Mr X had numerous contacts with the council after that initial contact and he was provided with accommodation in Windsor in April 2016, moving to alternative accommodation in July 2016. However, it was not until March 2017 that Mr X moved to a permanent housing association property in Windsor.
- 2.9 Mr X first complained to the council in April 2016, and he complained to the Local Government & Social Care Ombudsman when he received no response.
- 2.10 The LGO referred the matter back to the council in June and again in August 2016 as the LGO thought the council should have the opportunity to deal with the complaint properly. The LGO contacted the council again in September 2016, but the council did not respond until November 2016, when a letter was also sent to Mr X.
- 2.11 The LGO decided to investigate Mr X's complaint and on 9 February 2017 asked the council for further information.
- 2.12 Despite reminders, telephone contact the council did not respond to the LGO's enquiries. As a result the LGO arranged to inspect the council's files and to interview an officer on 4 May 2017. The LGO cancelled these arrangements, however, when the council assured the LGO that a response would be sent by 2 May 2017. The council did respond but did not answer all the questions or provide all the information requested.
- 2.13 As a result the LGO interviewed officers in June 2017. On 16 June the LGO asked the council for further information, but only received this after informing the council it would issue a witness summons if it did not do so.
- 2.14 Mr X's complaint to the Local Government & Social Care Ombudsman (LGO) was that the council:
 - Failed to protect his belongings when he became homeless – Not upheld
 - Did not offer him suitable accommodation – Upheld
 - Did not help find him permanent housing – Upheld
 - Would not rehouse him in central Windsor – Not Upheld, and
 - Did not deal with his complaint about these matters properly – Upheld.
- 2.15 The conclusions of the investigation by the LGO identified the following faults where the council:
 - Did not keep proper records of some of its decisions and of its contact with Mr X
 - Offered Mr X unsuitable interim accommodation
 - Took too long to provide Mr X with temporary accommodation and the accommodation it eventually offered was unsuitable

- Used one standard letter when it offered interim and temporary accommodation, and failed to notify applicants of their right to request a review of the suitability of temporary accommodation
- Uses current standard letters that are both interim accommodation offer letters, but one is incorrectly titled “Offer of Temporary Accommodation”
- Does not have a standard letter for offers of temporary accommodation
- Failed to nominate Mr X for an available ground floor flat in an area of Mr X’s choice after a housing association rejected an earlier nomination
- Failed to deal with Mr X’s complaint in accordance with its complaints procedure
- Failed to deal properly with the LGO

2.16 The LGO found these faults caused injustice to Mr X and made a recommendation that the council must consider the report and confirm within three months what action it has taken or proposes to take.

2.17 In addition the LGO recommended the council should:

- Apologise to Mr X for the identified faults and for the injustice this caused him, and provide the LGO with a copy of its letter
- Pay Mr X £1,050 for the three and a half months he was without any accommodation
- Pay Mr X a further £2,875 for the eleven and a half months he lived in unsuitable temporary accommodation
- Pay Mr X £250 for his time and trouble pursuing his complaint. This makes a total payment of £4,175. The council should provide proof it has made this payment
- Amend its interim accommodation offer letters so that both are correctly titled, and provide the LGO with copies
- Create a separate temporary accommodation offer letter and provide the LGO with a copy, and
- Review and improve its complaint handling arrangements and its Ombudsman liaison arrangements, and tell us what it has done to improve its arrangements, including those arrangements for handling complaints in relation to outsourced services.

2.18 The council received and reviewed these recommendations when the LGO issued their draft report to us on 28 November 2017. All the recommendations were accepted and the following actions were completed:

- An apology was made to Mr X on 19 December 2017
- £4,175 was paid to Mr X on 9 January 2018
- The two interim accommodation letters were amended as required
- Implemented a separate temporary accommodation letter
- Reviewed and improved complaints handling arrangements along with its LGO liaison arrangements including:
 - Implementing a complaints database where all complaints are logged centrally and assigned to a service manager for response with auto notifications being sent when deadlines are approached. The system also logs all interactions between officers and a complainant
 - Reports are sent weekly to the relevant services for review
 - Strengthening the strategic management of the service
 - Implementing a new structure from March 2018
 - Changing responsibility for LGO liaison to the complaints team in order to streamline the process.

- Changed the process for responding to LGO queries. The complaints service will now manage the queries which ensure better oversight as the service manage the original complaint. LGO queries will also be incorporated into the complaints report to corporate overview and scrutiny and the senior management team.

2.19 In addition to this the council is taking further steps to ensure the housing service is strengthened, including:

- Moving the housing enabling and housing options services into one directorate under the leadership of one Executive Director, and one Principal Member from 1 April 2018.
- Investing in a new housing system to ensure there is one database for the recording of all decisions, with an estimated implementation date of the end of September 2018.
- Developing a new housing strategy, updating the homeless strategy and allocations policy driven by the council's priorities, best practice and taking account of the new requirements from the Homeless Reduction Act.

3 KEY IMPLICATIONS

3.1 Table 1 contains the key implications.

Table 1: Key implications

| Outcome | Unmet | Met | Exceeded | Significantly Exceeded | Date of delivery |
|---|--------------------------|-----------------------------|-----------------------------|-------------------------------|-------------------------|
| Housing service led by one Executive Director | Not achieved by 01/04/18 | Achieved by 01/04/18 | Achieved before 01/04/18 | Achieved before 25/03/18 | 01/04/18 |
| New housing system implemented | No system in place | System in place by 30/09/18 | System in place by 15/09/18 | System in place by 01/09/18 | 30/09/18 |
| Monthly complaint reporting to Senior Management Team | No reporting in place | In place by 30/04/18 | In place by 31/03/18 | N/A | 30/04/18 |

4 FINANCIAL DETAILS / VALUE FOR MONEY

4.1 The LGO recommended that Mr X was paid an amount totalling £4,175. This was paid to Mr X on 9 January 2018.

5 LEGAL IMPLICATIONS

5.1 The LGO has no legal power to force councils to follow its recommendations, but most always do. Some of the things the LGO might ask a council to do are:

- Apologise
- Pay a financial remedy
- Improve its procedures so similar problems do not happen again

5.2 Section 30 of the Local Government Act requires the council to place two public notice announcements in local newspapers within two weeks of a report being published, and in addition we need to make copies of the report available free of charge at one or more of our offices for a period of three weeks from the date the public notice is published.

5.3 Where there is injustice as a result of fault, Section 31(2) of the 1974 Act, the LGO report must be laid before the authority concerned, and within three months of receiving the report tell the LGO the action it has taken or proposes to take.

6 RISK MANAGEMENT

None.

7 POTENTIAL IMPACTS

None.

8 CONSULTATION

None.

9 TIMETABLE FOR IMPLEMENTATION

9.1 The stages and deadlines for implementing the recommendations are in Table 5.

Table 2: Implementation timetable

| Date | Details |
|-------------------|---|
| 1 April 2018 | Housing Enabling and Housing Options under leadership of one Executive Director |
| 18 April 2018 | Considered by Planning and Housing O&S Panel |
| 26 April 2018 | Any recommendations from Planning and Housing considered by Cabinet |
| 30 April 2018 | Monthly complaint reporting to Senior Management Team |
| 30 September 2018 | New housing system implemented |

10 APPENDICES

10.1 The appendices to the report are as follows:

- Appendix A – Report by the Local Government and Social Care Ombudsman, reference number 16 003 062

11 BACKGROUND DOCUMENTS

None

12 CONSULTATION (MANDATORY)

| Name of consultee | Post held | Date issued for comment | Date returned with comments |
|--------------------------|---|--------------------------------|------------------------------------|
| Cllr McWilliams | Principal Member for Housing and Communications | 20/03/18 | 21/03/18 |
| Alison Alexander | Managing Director | 19/03/18 | 19/03/18 |
| Russell O'Keefe | Executive Director | 19/03/18 | |
| Rob Stubbs | Section 151 Officer | 19/03/18 | |
| Kevin McDaniel | Director of Children's Services | 19/03/18 | 19/03/18 |
| Hilary Hall | Deputy Director Strategy & Commissioning | 19/03/18 | 19/03/18 |
| Nikki Craig | Head of HR and Corporate Projects | 19/03/18 | 19/03/18 |
| Louisa Dean/Milly Camley | Communications | 19/03/18 | |

REPORT HISTORY

| | | |
|--|-----------------------------|------------------------------|
| Decision type: Non-key decision | Urgency item? Yes | To Follow item? No |
| Report Author: Andy Jeffs, Executive Director, 01628 79 6527 | | |

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**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
Royal Borough of Windsor and
Maidenhead Council
(reference number: 16 003 062)**

15 February 2018

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

| | |
|-----------|------------------------------------|
| Mr X | The complainant |
| Officer A | A Senior Housing Needs Officer |
| Officer B | The Information Governance Manager |
| Officer C | The Complaints Team Leader |

Report summary

Homelessness and complaints handling

Mr X complains that the Council:

- failed to protect his belongings when he became homeless;
- did not offer him suitable accommodation;
- did not help him find permanent housing;
- would not rehouse him in central Windsor; and
- did not deal with his complaint about these matters properly.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

In addition to the requirements set out above we recommend the Council should:

- apologise to Mr X for the identified faults and for the injustice this caused him, and provide us with a copy of its letter;
- pay Mr X £1,050 for the three and a half months he was without any accommodation;
- pay Mr X a further £2,875 for the eleven and a half months he lived in unsuitable temporary accommodation;
- pay Mr X £250 for his time and trouble pursuing his complaint. This makes a total payment of £4,175. The Council should provide proof it has made this payment;
- amend its interim accommodation offer letters so that both are correctly titled, and provide us with copies;
- create a separate temporary accommodation offer letter and provide us with a copy; and
- review and improve its complaints handling arrangements and its Ombudsman liaison arrangements, and tell us what it has done to improve its arrangements, including those arrangements for handling complaints in relation to outsourced services.

The complaint

1. Mr X complains about the way the Council handled his homelessness application. He said the Council:
 - failed to protect his belongings when he became homeless;
 - did not offer him suitable accommodation;
 - did not help him find permanent housing;
 - would not rehouse him in central Windsor; and
 - did not deal with his complaint properly.

The Ombudsman's role

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)

How we considered this complaint

4. We have produced this report following the examination of relevant documents and interviews with the complainant and relevant employees of the Council.
5. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

Background

6. Mr X separated from his wife in December 2015. They have three children. Children's Services were involved with the children.
7. Mr X suffers from chronic lower back pain and uses crutches. He also suffers from depression, panic attacks and anxiety attacks. He takes painkillers and anti-depressants.
8. Mr X is unable to walk more than 10 metres without his crutches. And, although he can walk upstairs, this is difficult and causes him pain.

Key facts

Mr X's homelessness application

9. On 8 December 2015 Mr X left his family home following the breakdown of his marriage. He spoke to Children's Services about getting his belongings from the family home as he was concerned his wife was disposing of them. The records show that Children's Services told Mr X they could not help him with his belongings, and that his friend had helped him with this.

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10. In December 2015 Mr X asked the Council for help with housing as he was homeless. Mr X said the Council offered him accommodation at around 5pm on 23 December in Guildford, Kent or Southall. The Council said it made every effort to get suitable accommodation for Mr X. But it has no record of the accommodation it offered Mr X or if it considered whether it was suitable for him. Mr X said he could not travel to Guildford, Kent or Southall because of his disability. There is no evidence to show the Council advised Mr X he could get a travel warrant via the Local Welfare Provision. Mr X said he stayed with his parents for a couple of nights over Christmas, but he did not get on with them. He then spent a few weeks “sofa surfing” at friends’ places.
 11. On 11 January 2016 Mr X filled in a homelessness application form. He described his health problems and said he was sleeping rough. Mr X told us he slept in garages close to his parents’ home and used a local leisure centre for showers. He gave the Council a letter from his GP saying he had a history of depression. And he said he asked Officer A for help with storing his belongings. There is no record of this. The Council says it now asks every applicant if they need storage for their belongings when it accepts a homelessness application. More recently, Officer A invited Mr X to provide an inventory of his lost belongings. He has not done so.
 12. Officer A called Mr X on 13 January 2016 and said based on his GP’s letter the Council would not have a duty to provide accommodation. She noted that he could only manage one flight of stairs and could walk only 10 metres without a stick. In a further telephone call on 18 January, Mr X said he would speak to his GP. However, when Officer A spoke to Mr X on 27 January he had not been able to get to his GP.
 13. On 1 February 2016 Officer A wrote to Mr X’s GP asking for further information. The GP responded on 4 February confirming Mr X had depression and chronic lower back pain which affected his mobility. On 9 February Officer A emailed the Private Sector Team putting Mr X forward for a ground floor property “*or first floor (at a push as relies on crutch)*” in three areas of Mr X’s choice, including central Windsor.
 14. On 10 February 2016 Officer A wrote to Mr X saying the Council had accepted the full homelessness duty towards him. She said Mr X was in Band A for rehousing. However, the records show he was in Band B, which is consistent with the Council’s allocation scheme.
 15. Nothing further appears to have happened until 1 March 2016 when Mr X’s MP contacted the Council. Officer A responded on 3 March saying Mr X would receive an offer of suitable permanent accommodation but nothing meeting his medical requirements had come up. She said the Council had offered Mr X interim accommodation on numerous occasions, and she and colleagues had spoken to him on an almost daily basis. There is no record of the offers of accommodation. And, apart from Mr X’s requests for contact, there is no record of any telephone discussions between Officer A and Mr X between the end of January and 23 March.
 16. In March 2016 Officer A contacted the Private Sector Team again. They had nothing suitable in Windsor. Officer A spoke to Mr X on 23 March about the possibility of a property in Maidenhead, but he declined it because his support network and GP were in Windsor.

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17. On 11 April 2016 Officer A wrote to Mr X offering him a place at Q Lodge. She used the standard letter described in paragraph 40. Mr X moved into Q Lodge. It was bed and breakfast accommodation with shared facilities about four miles from the centre of Windsor. Mr X said it was in the middle of nowhere and there were no buses or other facilities nearby. As he did not have his own transport he was stuck at Q Lodge if he couldn't get a lift. There is no evidence to show the Council offered Mr X travel warrants while he lived at Q Lodge.
 18. Mr X continued to call Officer A. On 26 April 2016 he asked her to contact him about his room at Q Lodge. There is no evidence showing Officer A returned Mr X's calls. Mr X said she did not do so.
 19. On 11 July 2016 the Council moved Mr X to M House in Windsor. It was a one bedroom self-contained flat on the third floor. Mr X said there was a lift on the other side of the building but there was no access to his flat from there. There was no lift access to his flat. Mr X said he could get up to his flat but this caused him significant pain. The Council said Mr X did not let Officer A know of any difficulties with this accommodation. Had he done so, Officer A would have tried to remedy the problems.
 20. On 31 March 2017 Mr X moved to a permanent housing association property in Windsor. Mr X said that apart from the accommodation the Council offered him before Christmas 2015, a property in Maidenhead, Q Lodge and M House, the Council did not offer him anything else. He said his wife would not allow him to see his children while he was living in temporary accommodation. He is now taking legal action to have contact with his children.
 21. The Council has provided information about interim and temporary accommodation it provided for homeless applicants during the relevant period. It also provided information about the nominations it made to a housing association for permanent accommodation. The information is unclear and does not provide all the information we would like. Nevertheless, it shows the Council nominated Mr X for a permanent housing association property in May 2016. The Housing Association rejected the nomination because the property was too close to Mr X's wife. The information also shows that in June 2016 the Housing Association asked the Council for nominations for several properties including a ground floor flat in one of Mr X's preferred areas. The Council nominated another Band B applicant for the property.

The Council's handling of Mr X's complaint

22. Mr X first complained to the Council in April 2016. He complained to us when it did not respond. We referred the matter back to the Council in June and again in August 2016 as we thought it should have an opportunity to deal with the complaint properly.
23. We contacted the Council in September 2016 asking for an update. Despite ongoing contact with the Council, we did not receive a response until November 2016. The Council also wrote to Mr X in November 2016. He did not receive it at the time.
24. We decided to investigate Mr X's complaint and asked the Council for further information on 9 February 2017.
25. We expect councils to respond to our enquiries within 20 working days. However, despite reminders, telephone contact with Officers B and C, and direct contact with Officer A (which we would not ordinarily have), the Council did not respond to our enquiries.

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26. We arranged to inspect the Council's files and to interview an Officer on 4 May 2017. We cancelled these arrangements when the Council assured us we would receive a response by 2 May. The Council did respond but it did not answer all our questions or provide all the information we asked for.
27. We interviewed Officers A, B and C in June 2017. On 16 June we asked the Council for further information about the one bedroom and bedsit accommodation it uses for homeless applicants. It provided this information only after we said we would issue witness summonses if it did not do so.

Complaint - the Council failed to protect Mr X's belongings when he became homeless

Legal background

28. Where the council owes a housing duty, it must protect the applicant's personal property if there is a risk it may be lost or damaged. (*Housing Act 1996, section 211*)

Analysis

29. Mr X alleged the Council failed to protect his belongings. Officer A's record keeping throughout the life of Mr X's homelessness application was poor. However, her records of her early contact with Mr X do not refer to his belongings. And Children's Services' records show Mr X spoke to them about his belongings. Children's Services' records also show that Mr X's friend helped him retrieve at least some of his belongings. Officer A invited Mr X to provide an inventory of his lost belongings but he has not done so.
30. We do not uphold this part of Mr X's complaint as there is no evidence of fault. And it would be reasonable for Mr X to provide an inventory of his lost belongings.

Complaint - the Council did not offer Mr X suitable accommodation

Legal and administrative background

Homelessness

31. When a person applies to a council for accommodation and it has reason to believe they may be homeless or threatened with homelessness, a number of duties arise, including:
- to make enquiries;
 - to secure suitable accommodation for certain applicants pending the outcome of the enquiries;
 - to notify the applicant of the decision in writing and the right to request a review of the decision.
- (*Housing Act 1996, section 184 and Homelessness Code of Guidance paragraphs 6.2 and 6.6*)
32. A council must provide interim accommodation while it considers a homelessness application if it has reason to believe the applicant may be homeless, eligible for assistance and in priority need. (*Housing Act 1996, section 188 and Homelessness Code of Guidance for Local Authorities, paragraph 6.5*)
33. Examples of applicants in priority need are:
- people with dependent children;
 - pregnant women;
 - people who are vulnerable due to serious health problems, disability or old age.

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34. The law says councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and members of his or her household. This duty applies to interim accommodation and accommodation provided under the main homelessness duty. (*Housing Act 1996, section 208*)
35. Councils must consider the location of accommodation when they consider if it is suitable for the applicant and members of their household. If a council places an applicant outside its district it must consider, amongst other things:
- the distance of the accommodation from the “home” district;
 - the proximity and accessibility to local services, amenities and transport.
- (*Homelessness (Suitability of Accommodation) Order 2012*)
36. If a council is satisfied someone is eligible, homeless, in priority need and unintentionally homeless it will owe them the main homelessness duty. Generally, the council carries out the duty by arranging temporary accommodation until it makes a suitable offer of social housing or private rented accommodation. (*Housing Act 1996, section 193*)
37. Homeless applicants may request a review of the suitability of temporary accommodation provided once the council has accepted the main homelessness duty. The council should notify applicants of their right to request a review of the suitability of any accommodation it offers in discharge of a homelessness duty. (*Housing Act 1996, section 202 and Homelessness Code of Guidance, paragraph 19.3*)
38. There is no right to request a review of the suitability of interim accommodation provided pending the outcome of the Council’s enquiries. A homeless applicant may challenge the suitability of interim accommodation by way of judicial review. We do not normally expect them to do so.
39. The Council does not believe we can make a judgement on the suitability of accommodation once an applicant has accepted it. As there is no right of review of the suitability of interim accommodation, we can consider this. And, although we cannot normally investigate a complaint when someone could take the matter to court, we can investigate if we think it would be unreasonable for them to do so. In this case, we decided it would not have been reasonable for Mr X to go to court as the Council did not tell him about his right of review of the suitability of the temporary accommodation it offered him.
- How the Council offers interim and temporary accommodation***
40. At the time of the events complained of, the Council used a standard letter when it offered a homeless person interim or temporary accommodation. The letter said “*interim accommodation has been arranged for you...*” regardless of whether the accommodation was interim or temporary accommodation. The letter did not mention the right to request a review of the suitability of temporary accommodation.
41. The Council now has two standard letters. One letter is headed “*Offer of Interim Accommodation*” while the other is headed “*Offer of Temporary Accommodation*”. Both are, in fact, interim accommodation offer letters. And both invite applicants to contact the Council if they do not think the accommodation is suitable. The letters also tell applicants of their right to request a review of the suitability of the accommodation if they remain there once the Council accepts the full homelessness duty towards them. The Council does not have a separate temporary accommodation offer letter to use when it offers applicants temporary accommodation once it accepts the full homelessness duty.

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42. The Private Sector Team is responsible for sourcing and allocating accommodation. The Council has a list of properties that it can use as temporary accommodation for homeless applicants. Over 90 of the properties have one bedroom or are bed and breakfast accommodation. However, other housing authorities use the same properties for their homeless applicants.

Housing Options Service restructure

43. The Council said it was restructuring its Housing Options Service (HOS) when Mr X made his homelessness application. The changes include the following.
- Its system is kept up-to-date with notes of each contact.
 - It introduced a new travel warrant system in January 2016. This allows homeless applicants who are struggling financially to access vital services such as medical appointments and to maintain family networks. Before this, travel warrants could be obtained through the Local Welfare Provision (part of the Social Fund). It also implemented a taxi contract to boost the travel warrant system.
 - It has had a Sourcing Accommodation Officer since May 2017 who ensures accommodation (interim, temporary and in the private sector) is available. HOS asks the Officer for accommodation using an online referral form.
 - Extra officers have been appointed to clean up the filing system, to ensure nominations for permanent accommodation are made in line with the Council's allocations policy, and to review pointing and banding of live applications.
 - The Sourcing Accommodation Officer and Housing Options Assistant meet weekly to discuss accommodation options.
 - All letters have been reviewed and redrafted, and will be reviewed again.

Officer A's comments

44. Officer A confirmed she had been involved with Mr X's case from the outset. She had had lots of informal discussions with him about the properties he had been offered. And she had returned many of his calls. But she had no records of her telephone conversations or of the many properties she said he was offered.
45. Officer A acknowledged that the offer letter described in paragraph 40 does not refer to a homeless applicant's right of review about the suitability of temporary accommodation. She assured us that officers would discuss this with applicants face to face or over the telephone, and when a property is offered. She also assured us that she knew the difference between interim and temporary accommodation.
46. Officer A did not know where Mr X stayed between February 2016 (when the Council accepted the full homelessness duty towards him) and April 2016 (when it offered him a room in Q Lodge).

Analysis

47. A council only needs "reason to believe" that someone may be homeless, eligible and in priority need before it should offer interim accommodation. So if it does not have enough information to be satisfied that it should *not* provide interim accommodation, it has a duty to provide it. An applicant who has a disability may be in priority need.
48. The Council has no record of the out-of-area accommodation Mr X said it offered him late in the day just before Christmas 2015. He had already made his

homelessness application by then, even though he did not complete an application form until the following month. So it seems the Council accepted it should provide him with interim accommodation, perhaps because it could see Mr X's limited mobility. However, there is also no evidence to show why the Council considered the out-of-area accommodation would be suitable for Mr X, or how it thought he could get there. The Council's failure to record its reasoning for offering accommodation so far away, and why it thought it was suitable for Mr X, is fault. In our view, the accommodation – so far from Mr X's medical services and his children – was not suitable. In addition, the Council provided no evidence to show it advised Mr X he could get a travel warrant via the Local Welfare Provision. In any event, it is unlikely he could have obtained a travel warrant quickly enough to access the offered accommodation that day.

49. When Officer A spoke to Mr X on 13 January 2016 she said the Council would not have a duty to provide him with accommodation. We recognise that by then the Council had Mr X's GP letter which referred to his depression but made no mention of his mobility problems. But Officer A had noted that Mr X could manage only one flight of stairs and could walk only 10 metres without a stick. So her decision not to offer Mr X interim accommodation – when she may have had reason to believe he had priority need because of his mobility problems - makes no sense.
50. The Council accepted the full homelessness duty towards Mr X on 10 February 2016. It then had a duty to offer him suitable temporary accommodation. Officer A had already contacted the Private Sector Team putting him forward for a ground floor property "*or first floor (at a push as relies on crutch)*". She said the Council offered Mr X accommodation on numerous occasions. But there is no record of any offers other than a property in Maidenhead (which Mr X refused), Q Lodge and M House. So we cannot be satisfied the Council made Mr X any other offers of accommodation. The Council took far too long to comply with its duty to provide Mr X with temporary accommodation after it accepted the full homelessness duty towards him. This is further fault.
51. The Council provided a list of properties the Council uses for homeless applicants. Over 90 of these properties had one bedroom or were bed and breakfast accommodation. Other councils use the same accommodation, and so not all the accommodation would have been available. However, the information provided suggests the Council placed several homeless applicants in temporary accommodation during the relevant period. In our view, the Council could and should have offered Mr X suitable temporary accommodation sooner. Its failure to do so is fault.
52. So the Council failed to offer Mr X suitable interim accommodation, and failed to offer temporary accommodation in a timely manner. We explained in paragraph 40 why we considered the suitability of the temporary accommodation the Council offered Mr X. In our view, the temporary accommodation the Council offered Mr X was not suitable for him. We have explained why we reached this view in the following paragraphs.
53. The Council offered Mr X temporary accommodation in Maidenhead in March 2016. We would not criticise it for making this offer. And in any event, Officer A apparently accepted that it would not be suitable for him.
54. However, the later offers of Q Lodge and M House – both temporary accommodation following the Council's decision on Mr X's homelessness application - were not suitable. The Council knew about Mr X's mobility problems.

Q Lodge was not suitable because of its limited public transport and nearby facilities. And, M House was not suitable because the flat was on the third floor without lift access: Officer A had previously said Mr X should be offered ground floor accommodation or first floor “at a push”. The Council said Mr X did not tell Officer A about the problems he had with his accommodation and, had he done so, she would have remedied the problems. The evidence shows how often Mr X tried to contact Officer A. Had she returned his calls she might have discovered the difficulties he was having with his accommodation.

55. So the Council offered Mr X unsuitable interim accommodation in December 2015 and took too long to offer him temporary accommodation after accepting the main homelessness duty towards him. The temporary accommodation it offered him was not suitable. This is fault.
56. In addition, the Council used a standard letter (see paragraph 40) when it offered interim or temporary accommodation. The letter failed to notify applicants of their right of review of the suitability of the temporary accommodation offered. Officer A said officers tell applicants about their rights of review. That is not enough. The Council should have separate letters offering interim and temporary accommodation. And the temporary accommodation offer letters in use when Mr X made his homelessness application should have notified applicants of their right to request a review of its suitability and the time limit for doing so.
57. The Council now has two offer letters. Both of these are, in fact, interim accommodation offer letters. One is incorrectly titled “*Offer of Temporary Accommodation*”. The letter should be correctly titled. And the Council should have a separate temporary accommodation offer letter.
58. Officers apparently understand the difference between interim and temporary accommodation. But, in this case, they either did not fully appreciate the significance of the differences or they disregarded them. This may explain why the Council’s original standard letter referred only to interim accommodation. It may also explain why one of its new standard letters is incorrectly titled “*Offer of Temporary Accommodation*”. But they are different in the eyes of the law: the Council’s duties in relation to each are significantly different, as are an applicant’s rights of review. So the Council needs to put this right.
59. Officer A did not record much of her contact with Mr X: there is no record of any other offers of accommodation or of her returning Mr X’s calls, for example. This is fault. Compiling and maintaining proper records is a basic necessity so, for example, officers do not have to rely on memory, and records are available for reference when there is a dispute or complaint.

Complaint - the Council did not help Mr X find permanent housing

How the Council offers permanent accommodation

60. The Council has a housing allocation scheme which sets out how it will allocate available accommodation. It places applicants in Bands A to C, with Band A having the highest priority. Priority within bands is decided by housing needs points which the Council awards to reflect an applicant’s needs.
61. The Council awards 25 points a month to homeless applicants in priority need it has placed in temporary accommodation, to reflect the length of time spent in the accommodation. Homeless applicants in temporary accommodation are not eligible for any other housing need points.

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62. The Council does not have a choice based lettings scheme. It makes direct offers of available accommodation using the Bands and housing need points. If more than one applicant has the same number of housing need points within a Band it will consider applicants in date order.

Analysis

63. Officer A said the Council placed Mr X in Band A for permanent housing. The records show he was in Band B. This is consistent with the Council's allocation scheme. The records also show the Council nominated Mr X for permanent housing in May 2016. But the Housing Association would not accept the nomination as the property was too close to Mr X's ex-wife. We do not find fault with the Council for this. However, the following month (June 2016) the Housing Association asked the Council for a nomination for another ground floor flat in one of Mr X's preferred areas. Even though Mr X's previous nomination had been unsuccessful, the Council did not nominate him for the property. The Council nominated another Band B applicant for the property, but there is no obvious reason why it could not have nominated Mr X. This is fault.
64. So the Council is at fault for failing to nominate Mr X for permanent accommodation in June 2016. This means that he lived in unsuitable temporary accommodation for an additional eight months longer than necessary. So in total, Mr X was in unsuitable temporary accommodation for eleven and a half months longer than necessary (from the time he moved into Q Lodge in April 2016 to when he moved into a housing association property in March 2017).

Complaint - the Council would not rehouse Mr X in central Windsor

65. Mr X alleged the Council would not rehouse him in central Windsor. The evidence does not support this allegation. When Officer A emailed the Private Sector Team in February 2016 she put him forward for properties in three areas, including central Windsor. It is unfortunate that the Housing Association would not accept Mr X for a property when the Council nominated him in May 2016. But that did not happen because of any fault by the Council.
66. We do not uphold this part of Mr X's complaint.

Complaint - the Council did not deal with Mr X's complaint properly

The Council's complaints procedure and how it liaises with us

67. The complaints procedure in use in early 2016 had three stages. The Council aimed to respond to complaints at each stage of the procedure within 10 working days.
68. The Council introduced a new complaints procedure in October 2016. This has two stages. The Head of Service should respond within 10 working days at stage 1, while the Director responsible for the service and complaints team should respond within 20 working days at stage 2.
69. Officer B acts as the link officer between our office and the Council. He passes the complaints we refer to the Council to its Complaints Team, and forwards the Complaints Team's response to us. He has no involvement in complaint investigation.
70. We normally liaise with link officers rather than directly with the officers involved in the matters complained of. In our experience, link officers are usually part of a council's complaints team.

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71. Officer C and two other officers make up the Complaints Team. At the time of Mr X's complaint they used a spreadsheet to monitor the progress of complaints. The Team now has a database to do this and to prompt officers for responses when necessary. It also sends Service Leaders a weekly report to act as a reminder about complaints.

Officer A's comments

72. Officer A said she knew about the Council's complaints procedure. She had no recollection of Mr X's complaint but said she would have received it. She stressed that the Council valued its customers.

Officer B's comments

73. Officer B said he was not part of the Complaints Team but he was responsible for coordinating the Council's responses to our enquiries. He said he did not chase responses in the way we might expect and acknowledged this was a weakness. He did not make a diary note to chase responses although it would be his role to do so.
74. Officer B said the Council was outsourcing some of its services. He assumed the Council would retain responsibility for managing complaints. But he did not know how the Complaints Team would liaise with the outsourced services.

Officer C's comments

75. Officer C explained how her Team monitors the progress of complaints (see paragraph 71). She said she, a colleague and Officer B had all been chasing Officer A for a response to our enquiries before we arranged to interview officers.
76. Officer C said it was the Complaints Team's role to ensure officers complied with the Council's complaints procedure. She said that chasing and monitoring were not working effectively at the time of Mr X's complaint. But complaints were being dealt with more efficiently now weekly reports are sent to Service Leaders.

Analysis

77. The Council's handling of Mr X's complaint was poor and failed at every level to comply with the complaints procedure.
78. The Complaints Team did not have control of the complaint. Its old and new ways of monitoring the progress of complaints failed in this case.
- We experienced delays in the Council responding to our enquiries.
 - We had to contact an officer direct and then arrange to interview officers to get the information we asked for.
 - The information the Council provided was incomplete and inadequate.
 - The Council provided some information only when we said we would issue witness summonses if it did not do so.

Conclusions

79. We identified the following faults by the Council:
- it did not keep proper records of some of its decisions and of its contact with Mr X;
 - it offered Mr X unsuitable interim accommodation;
 - it took too long to provide Mr X with temporary accommodation and the accommodation it eventually offered was unsuitable;

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- it used one standard letter when it offered interim and temporary accommodation, and failed to notify applicants of their right to request a review of the suitability of temporary accommodation;
 - its current standard letters are both interim accommodation offer letters, but one is incorrectly titled “*Offer of Temporary Accommodation*”;
 - it does not have a standard letter for offers of temporary accommodation;
 - it failed to nominate Mr X for an available ground floor flat in an area of his choice after a housing association rejected an earlier nomination;
 - it failed to deal with Mr X’s complaint in accordance with its complaints procedure;
 - it failed to deal properly with us.
80. The identified faults caused Mr X injustice.

Decision

81. There was fault by the Council causing injustice to Mr X.
- He has mental and physical health problems. Yet the Council offered him unsuitable interim accommodation and so for three and a half months between December 2015 and April 2016 he was without any accommodation. He slept rough for at least part of this time and “sofa surfed” at other times.
 - Mr X was isolated in his temporary accommodation at Q Lodge, and it was difficult and painful for him to access his temporary accommodation in M House.
 - The Council’s standard letter denied Mr X the opportunity to challenge the suitability of his temporary accommodation.
 - Mr X lived in unsuitable temporary accommodation for eleven and a half months longer than necessary because the Council did not tell him of his right of review of its suitability and failed to nominate him to an available housing association property in one of his preferred areas.
 - He was put to the time and trouble of pursuing a complaint with us because the Council did not deal with his complaint in accordance with its complaints procedure.
82. However, we do not think the identified faults prevented Mr X from having access to his children as he suggested. Mr X said he is taking legal action to get contact with his children. That is something he could have started at any time and was not dependent on the Council’s actions.

Recommendations

83. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
84. In addition to the requirements set out above we recommend the Council should:
- apologise to Mr X for the identified faults and for the injustice this caused him, and provide us with a copy of its letter;
 - pay Mr X £1,050 for the three and a half months he was without any accommodation;

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- pay Mr X a further £2,875 for the eleven and a half months he lived in unsuitable temporary accommodation;
 - pay Mr X £250 for his time and trouble pursuing his complaint. This makes a total payment of £4,175. The Council should provide proof it has made this payment;
 - amend its interim accommodation offer letters so that both are correctly titled, and provide us with copies;
 - create a separate temporary accommodation offer letter and provide us with a copy; and
 - review and improve its complaints handling arrangements and its Ombudsman liaison arrangements, and tell us what it has done to improve its arrangements, including those arrangements for handling complaints in relation to outsourced services.

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