



PLANNING PERFORMANCE FRAMEWORK ANNUAL REPORT 2015/16

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report provides an update on the progress of work undertaken on the Planning Performance Framework (PPF) for Midlothian. Specifically, it provides feedback from Scottish Government on the Council's submitted PPF for 2015/16.

2 BACKGROUND

- 2.1 Members may recall an initial report to Committee in November 2012 explaining that from October 2012 the Scottish Government's Minister for Local Government and Planning had instigated a new Planning Performance Framework system under which each local planning authority in Scotland would be required to submit annually a report to Scottish Government on its performance across a range of quantitative and qualitative measures, including the long-standing indicators of age of local plan(s) and speed of handling planning applications. Accordingly, this Council has prepared and submitted PPF reports for 2011/12, 2012/13, 2013/14, 2014/15 and 2015/16 on which it has received feedback.
- 2.2 As reported to Committee in November 2012 it remains the case that Scottish Government officials have made clear that the primary purpose of the PPF is to provide Ministers, Councils and the public with a much better understanding of how a particular planning authority is performing. Whilst it is inevitable that comparisons across planning authorities will be made, Scottish Government is advising that it is not a 'name and shame' exercise: where particular authorities may be underperforming the Scottish Government officials through normal liaison with officers in the relevant authorities will seek to assist and support improvement.
- 2.3 The Council's PPF for 2015/16 was submitted to Scottish Government in July 2016. Given its size a copy of the document has been placed in the Members' Library. It provides a comprehensive review of progress during the year and highlights steady improvement in a number of areas, examples of good quality development taking place on the ground; as well as continued good progress in the preparation of the Midlothian Local Development Plan.

3 FEEDBACK ON THE 2015/16 SUBMISSION

- 3.1 Formal written feedback was received in November 2016 by way of a letter from the Minister for Local Government and Housing, and enclosing a specific report on a total of fifteen 'performance markers'. A copy of the feedback is attached to this report.
- 3.2 In the feedback report on the fifteen performance markers, four were rated as 'green' giving no cause for concern, four were rated as 'amber' where areas for improvement are identified, and the following five areas were rated as 'red' where some specific attention is required:-
- i) processing agreements – offering agreements to prospective applicants;
 - ii) legal agreements – the time taken to conclude a legal agreement after resolving to grant permission;
 - iii) local development plan – less than 5 years since adoption;
 - iv) development plan scheme – project plan for next local plan; and
 - v) legacy cases – reducing the number of applications more than one year old.
- 3.4 It may be helpful to advise members of comments on each of the matters rated as 'red':

Processing Agreements

- 3.5 The number of major applications subject to a Processing Agreement was introduced retrospectively as a new performance measure for 2015/16. A Processing Agreement is a prescribed method of project management committing the applicant, the Council and ideally consultees to progressing applications in accordance with an agreed timeline.
- 3.6 Thirteen major planning applications were reported to the Planning Committee in 2015/16, nine (69%) of which were considered in accordance with the planned timescales. The planned timescale to report four applications (31%) to Committee were amended during the processing of the application to reflect the applicant's choice to submit amended plans/additional information for consideration. The planned timetables were agreed with applicants, but not subject to a formal processing agreement. This is the applicant's and Council's preferred methodology of project management. However following the introduction of this new PPF measure, Midlothian has reviewed its position with regard Processing Agreements and has offered agreements to applicants in 2016/17. To date applicants do not wish to conclude Processing Agreements, or if they wish to do so they are suggesting unrealistic timescales which would undermine the Council's position to effectively engage with interested parties and consultees. The Council is currently reviewing its Processing Agreement template with the objective of publishing it on its website early in 2017.

- 3.7 The Council's submission and corresponding feedback for 2016/17 should reflect this change in direction.
- 3.8 Across the 34 Scottish Planning Authorities a total of 103 Processing Agreements were concluded in 22 local planning authorities. Only 39% of all major applications (267) determined in Scotland in 2015/16 were subject to a Processing Agreement.

Legal Agreements

- 3.9 The delay in concluding legal agreements was in part due to the Lead Officer: Planning Obligations post (this officer negotiates and secures developer contributions associated with planning applications, primarily housing developments) being vacant for nine months following a management review in the summer of 2014. Following this review the responsibility for negotiating and securing developer contributions was transferred into the Planning team and the vacant post was back filled. In clearing the back log of cases a number of legacy agreements were concluded and as a consequence increasing the average time to conclude a legal agreement for the period 2015/16. Furthermore, the conclusion of a legal agreement is also within the control of the applicants who need to sign the final draft and register the agreement at the Registers of Scotland.
- 3.10 Changes in internal procedures are triggering early discussions with applicants with regard to developer contributions, which in turn are speeding up the legal agreement process. An improved performance should be reflected in the 2016/17 PPF submission. In addition applicants are now being advised that they risk applications being referred to elected members and potentially refused if an agreement is not concluded within six months from the date of resolution to grant planning permission.

Local Development Plan and Development Plan Scheme

- 3.11 Concerning the progress on local development plan preparation, in summary the position is that the timetable for preparation of the Midlothian Local Development Plan is dependent upon that of the Strategic Development Plan (SDP) for South East Scotland. Although Scottish Ministers' approval of the SDP was in June 2013 it was subject to a requirement that the six SESplan Councils jointly prepare supplementary guidance on housing land, and this process was concluded in Summer 2014. This delay impacted on the preparation of the proposed Midlothian Local Development Plan (MLDP). Notwithstanding this delay the 'Proposed Plan' has been submitted to the Scottish Government and is subject to a local plan examination where the 2,607 comments from 835 representations will be considered by the team of three Scottish Government Reporters appointed. The timetable for adoption is now primarily in the control of the Scottish Government.

3.12 Of the 34 planning authorities across Scotland 8 authorities do not have an up to date local development plan.

3.13 In addition, it is important to note that the adopted Midlothian Local Plan (2008) remains as a relevant and robust basis for promoting economic development, meeting housing need, and protecting/enhancing the environment in Midlothian.

Stalled Sites/Legacy Cases

3.14 A legacy case is a planning application which has remained undetermined for over a year. The main reasons why an application will take over a year to determine are as follows:

- the time taken to conclude a legal agreement to secure developer contributions;
- the applicant amending the scheme during the processing of the application;
- awaiting additional information from applicants and/or consultees; and
- on the request from the applicant.

3.15 For 2015/16 there remains 1,028 legacy cases across Scotland (this figure does not include those legacy cases currently with the Scottish Government for determination); 36 of these cases (3.5%) are within Midlothian. Although, there is an ambition to reduce this figure it is inevitable that there will be a small number of legacy cases in a planning authority.

3.16 To reduce the number of legacy cases the following procedural changes are being implemented:

- applicants are being advised that they risk applications being referred to elected members and potentially refused if an agreement is not concluded within six months from the date of resolution to grant planning permission;
- applicants are encouraged to engage in pre application discussions to reduce the need for amendments during the assessment of the application;
- planning officers are proactively chasing applicants and consultees for additional information; and
- planning officers are not normally agreeing to leave applications undetermined at the request of the applicant.

3.17 Two performance matters relating to engagement on the Main Issues Report (MIR) were scored as not applicable because of the stage of Midlothian's Proposed Plan. This was also the position in 2014/15. These measures had previously been scored as green in 2013/14.

4 RECOMMENDATION

4.1 It is recommended that:

- i) the Committee notes the feedback from Scottish Government on the Council's submitted Planning Performance Framework (PPF) for 2015/16; and
- ii) notes the specific actions being undertaken to address specific matters of concern.

Ian Johnson
Head of Communities and Economy

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Background Paper: Council's PPF (2014/15) submission

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Mr Kenneth Lawrie
Chief Executive
Midlothian Council

25 November 2016

Dear Mr Lawrie

PLANNING PERFORMANCE FRAMEWORK 2015-16

Thank you for submitting your authority's annual Planning Performance Framework (PPF) report covering the period April 2015 to March 2016. Please find enclosed your feedback report, which is based on the evidence provided within your PPF.

I am very pleased that the quality of PPF reporting has again improved with many authorities setting out a very clear story of how the service is operating and detailing their priority actions for improvement. There have been general improvements across most of the categories however, there still remains high levels of inconsistency in planning authority decision making timescales across the country. This was also reflected through the recent publication of the statistics for the first quarter of 2016-17 which shows that certain authorities, and certain cases, are dragging the statistics down considerably. I asked officials to look into the reasons for delay in some of the lengthiest cases and will report on that to the High Level Group on Performance.

Planning performance improvement has come a long way in recent years and the PPF framework provides an excellent opportunity for authorities to set out the details behind their performance and showcase good practice and innovative ideas. I hope we can continue to work positively with authorities to improve monitoring processes and continue our collective commitment to improving services.

This is an exciting time for planning – the momentum of the independent planning review is continuing and we will be publishing a consultation outlining options for change in the winter, to inform the future Planning Bill. The consultation will cover a variety of options to enhance community involvement in planning; help deliver homes and infrastructure; simplify development planning and management processes; and focus on improving the service and reputation of planning. It is a challenging timetable but a fantastic opportunity to deliver real change.

Although there are some things that we need legislation to change, many of the panel's recommendations don't need legislation, they need a change in working practices, a recognition that planning creates the places where people work, live, learn and play. To achieve the outcomes we all want to see, authorities need to reposition planning to ensure that it sits at the very heart of the authority and has the resources available to it to make sure it provides the best service possible to developers, stakeholders and the authority in which it sits. To help achieve this we will shortly be launching a consultation on raising the planning fee maximum in an effort to move towards cost recovery. Following the planning bill we will consult further on potential reform of the fee regime.

I hope that you and your authority will actively participate as we progress, ensuring that we see real change throughout the planning community.

KEVIN STEWART

CC: Ian Johnson, Head of Planning and Development

PERFORMANCE MARKERS REPORT 2015-16

Name of planning authority: **Midlothian Council**

The High Level Group on Performance agreed a set of performance markers. We have assessed your report against those markers to give an indication of priority areas for improvement action. The high level group will monitor and evaluate how the key markers have been reported and the value which they have added.

The Red, Amber, Green ratings are based on the evidence provided within the PPF reports. Where no information or insufficient evidence has been provided, a 'red' marking has been allocated.

No.	Performance Marker	RAG rating	Comments
1	Decision-making: continuous reduction of average timescales for all development categories [Q1 - Q4]	Amber	<p>Major Applications At 47.8 weeks your timescales have reduced from last year but remain slower than the national average of 38.8 weeks. RAG = Amber</p> <p>Local (Non-Householder) Applications At 10.7 weeks your timescales have improved again and are quicker than the 12.3 week national average. RAG = Green</p> <p>Householder Applications At 6.9 weeks your timescales are slightly longer than last year but remain quicker than the 7.5 week national average. RAG = Amber</p> <p>TOTAL RAG = Amber</p>
2	Processing agreements: <ul style="list-style-type: none"> offer to all prospective applicants for major development planning applications; and availability publicised on website 	Red	<p>You noted that the Council's preferred method of project management is agreeing planned timescales with applicants for major developments rather than offering processing agreements. However you note the Council is reviewing its position on this following the introduction of this key marker. RAG= Red</p> <p>We were unable to find an offer of processing agreements on your website. RAG= Red</p>
3	Early collaboration with applicants and consultees <ul style="list-style-type: none"> availability and promotion of pre-application discussions for all prospective applications; and clear and proportionate requests for supporting information 	Green	<p>You note that applicants and agents are encouraged to engage with the Council at the pre-application stage. Your Pre-Application Advice Service note directs that enquiries for pre-application advice must be made on your Pre-Application Enquiry Form and that you then endeavour to provide a written response within 42 days. However, we note that you also advised you have a long-established and very well used duty officer service and encourage informative pre-application discussions as part of your customer service. RAG= Green</p> <p>You have a set of online validation checklists outlining the information required to submit a valid planning application for different types of development. You highlighted that architects and agents have advised that the requirements are proportionate and that it is "easy to submit an application in Midlothian". RAG=Green</p>

4	Legal agreements: conclude (or reconsider) applications after resolving to grant permission <ul style="list-style-type: none"> reducing number of live applications more than 6 months after resolution to grant (from last reporting period) 	Red	<p>You have had a clear focus on legal agreements and developer contributions, with an audit carried by the Council's Audit team over the reporting year. A number of areas for improvements were identified and a series of measures implemented and the new arrangements have provided a timely and consistent customer approach, with the Planning Obligations Lead Officer and the in house solicitors meeting regularly to progress agreements.</p> <p>Despite that effort, your average timescales for planning/legal agreements for major developments is over 2 years (106 weeks), your average for all types of cases is over a year (55 weeks) and your average for local developments exceeds 6 months.</p>
5	Enforcement charter updated / re-published within last 2 years	Green	You have very recently updated and published your Enforcement Charter.
6	Continuous improvement: <ul style="list-style-type: none"> progress/improvement in relation to PPF National Headline Indicators; and progress ambitious and relevant service improvement commitments identified through PPF report 	Amber	<p>Both your Major and non-householder timescales have reduced however Major remains above the Scottish average. Householder applications have increased however they remain below the Scottish average. Your Development Plan is over 7 yrs, and there has been further slippage in the preparation timescales compared with the last DPS.</p> <p>RAG= Red</p> <p>You have made progress with your identified Service Improvements for 2014-15, achieving 3 out 5, however those in relation to the LDP and linked to that producing Supplementary Guidance on Developer Contributions have not yet been completed. Your next set of Actions includes a commitment to developing your people and supporting planning officers to gain their RTPI accreditation, you are also intending to take forward groups to deliver on your Service Review and progress changes to improve the planning service.</p> <p>RAG= Amber</p>
7	Local development plan less than 5 years since adoption	Red	Your current plan is the Midlothian Local Plan, adopted in December 2008, making it 7 years 3 months of age at the end of the reporting year.
8	Development plan scheme – next LDP: <ul style="list-style-type: none"> on course for adoption within 5 years of current plan(s) adoption; and project planned and expected to be delivered to planned timescale 	Red	<p>You are due to submit your plan to Ministers for consideration in August 2016, your latest DPS aims for adoption of the LDP in Spring 2017, by which point the Local Plan will be over 8 years old.</p> <p>RAG=Red</p> <p>In last year's feedback we noted "Your programme is on track with the latest Scheme but has slipped in relation to previous 6 schemes." This year you have again noted that you have slipped in relation to the previous 7 schemes, and have lengthened the timescales in the latest DPS (issued at the end of the reporting year) to allow it to mean you are on track according to that. This is developing into a pattern of slippage and extending timescales.</p> <p>RAG= Red</p>
9	Elected members engaged early (pre-MIR) in development plan preparation – <i>if plan has been at pre-MIR stage during reporting year</i>	N/A	

10	<p>Cross sector stakeholders* engaged early (pre-MIR) in development plan preparation – <i>if plan has been at pre-MIR stage during reporting year</i></p> <p><i>*including industry, agencies and Scottish Government</i></p>	N/A	
11	<p>Regular and proportionate policy advice produced on information required to support applications</p>	Green	<p>Supplementary Planning Guidance documents have been prepared on design related issues, complimenting the Council's existing planning policies.</p>
12	<p>Corporate working across services to improve outputs and services for customer benefit (for example: protocols; joined-up services; single contact arrangements; joint pre-application advice)</p>	Green	<p>The Council's planning function is part of the Communities and Economy Service, which also includes building standards, environmental health, economic development, trading standards, community and neighbourhood planning, and performance – this provides opportunities for joined up services. You highlighted that there are close working relationships between the Planning team and colleagues throughout the Council that contribute to the quality of development secured on the ground.</p> <p>You allocate and name a case officer for each application to be the single point of contact from pre-app to post decision discussions, and note that they will coordinate any input from internal consultees such as landscape and transport.</p> <p>In particular, you noted your Planning and Transportation Officers work together allowing new design principles and regulations to be more easily taken into account and helps streamline the two processes of securing Planning Permission and Road Construction Consent, benefitting developers.</p>
13	<p>Sharing good practice, skills and knowledge between authorities</p>	Amber	<p>You share skills with East Lothian for the delivery of archaeological services.</p> <p>You also note that the Planning Team was active in one of the HOPS Development Management Benchmarking Groups to share ideas and learn from other authorities. Similarly to our comments last year whilst you have mentioned that you participate in benchmarking for DM, your report does not go into any detail on this.</p>
14	<p>Stalled sites / legacy cases: conclusion or withdrawal of old planning applications and reducing number of live applications more than one year old</p>	Red	<p>One of the priorities identified in your Service Improvement Plan for 2014-15 related to reducing your number of legacy cases. You had 25 legacy cases and set a target to reduce that by 5% (equivalent to clearing between 1-2 cases) and you note you managed to clear 3 legacy cases over the year (and indicate that 12% had been determined).</p> <p>You commented that following the appointment of a new Planning Obligations Lead Officer (filling a post which had been vacant for 9 months), progress has been made, with the conclusion of section 75 agreements for a number of long-standing legacy cases.</p> <p>However, the overall number of legacy cases you have has increased from 25 to 36.</p>

15	<p>Developer contributions: clear and proportionate expectations</p> <ul style="list-style-type: none"> • set out in development plan (and/or emerging plan); and • in pre-application discussions 	Amber	<p>You note that delivery of key infrastructure is at the heart of your approach to developer contributions. You provided an example of being flexible in terms of developer contributions, at Shawfair.</p> <p>You have started work on new Supplementary Planning Guidance on Developer Contributions, and are intending the timing of the guidance to be linked to the adoption of the new LDP in Spring 2017.</p> <p>RAG= Amber</p> <p>As last year, there is little evidence in your PPF of officers talking about, and setting out requirements for developer contributions during pre-application discussion. Whilst your Pre-Application Advice Service Note indicates that you will provide advice, this seems to be through written exchange rather than discussions.</p> <p>RAG= Amber</p>
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MIDLOTHIAN COUNCIL
Performance against Key Markers

Marker		2012-13	2013-14	2014-15	2015-16
1	Decision making timescales				
2	Processing agreements				
3	Early collaboration				
4	Legal agreements				
5	Enforcement charter				
6	Continuous improvement				
7	Local development plan				
8	Development plan scheme				
9	Elected members engaged early (pre-MIR)			N/A	N/A
10	Stakeholders engaged early (pre-MIR)			N/A	N/A
11	Regular and proportionate advice to support applications				
12	Corporate working across services				
13	Sharing good practice, skills and knowledge				
14	Stalled sites/legacy cases				
15	Developer contributions				

Overall Markings (total numbers for red, amber and green)

2012-13	3	8	4
2013-14	2	8	5
2014-15	3	5	5
2015-16	5	4	4

Decision Making Timescales (weeks)

	2012-13	2013-14	2014-15	2015-16	2015-16 Scottish Average
Major Development	42.8	60.5	77.4	47.8	38.8
Local (Non-Householder) Development	21.5	19.7	11.0	10.7	12.3
Householder Development	7.5	6.9	6.7	6.9	7.5