

**Item No.8 on Agenda**

Local Members' Interest
N/a

**Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel  
25 September 2008**

**Planning Regulation Service Scrutiny Working Group  
Final Report**

**Recommendation**

1. That the Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel consider the final report of the Planning Regulation Service Scrutiny Working Group, with a view to endorsing its submission for Executive Response.

**Report of Scrutiny and Performance Manager****Summary****What is the Scrutiny and Performance Panel being asked to do and why?**

2. The Planning Regulation Scrutiny Working Group have now completed their review and produced a final report which summaries the evidence received and their conclusions and recommendations. The Panel are asked to consider the report and determine whether they endorse it for submission to Cabinet, for the provision of an Executive Response. If forwarding the report to Cabinet, the Panel are invited to consider if they wish to make any accompanying submission.

**Report****Background**

3. The Annual Report of the Planning Regulation Service was referred from the Planning Committee to the Panel, with a request that they considered undertaking a review of the service. The Panel agreed and established a Working Group to undertake this review. The Working Group's final report, containing conclusions and recommendations arising from their review findings, is appended. The Chairman of the Scrutiny Working Group, Councillor Jack Barber, will present the report to the Panel for their consideration.

**Next Steps**

4. Subject to the endorsement of the Panel, the final report, together with any accompanying submission that the Panel may wish make, will be submitted to Cabinet for the provision of an Executive Response to the report and recommendations.

5. The Panel are reminded that if recommendations do not require any Cabinet decisions - they can be dealt with through delegated decision making powers - then final reports are submitted to the relevant Cabinet Portfolio Holder and Corporate Director only.
6. In this instance, the Panel are advised to send a copy of their final report to the Chairman of the Planning Committee to provide feed back on the outcome of their referral.
7. **Link to Strategic Plan** - The service area which is the subject of the review is most closely aligned with the Sustainable Development priority.
8. **Implications** - The equalities and legal; resource and value for money; and risk implications are set out in section 7 of the appended report.

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### **Appendices/Background papers**

- Final Report of the Planning Regulation Scrutiny Working Group (appended)

# **Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel**

## **Planning Regulation Service Scrutiny Working Group Final Report**

August 2008

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## 1. Conclusions and Recommendations of the Planning Regulation Service Scrutiny Working Group

1.1 Having reviewed the level and standard of the Planning Regulation Service, including the resources available and required to deliver the service, the Working Group concludes that:

1.1.1 We are generally satisfied and supportive of the level of service being provided currently by the Planning Regulation Service and consider that the staffing resources available are adequate to provide this level of service, in the context of the intended outcomes of controlling the development of mineral and waste activities and promoting public acceptance of the development control process.

1.1.2 Income and costs

We consider that the system for determining monitoring visits is robust and are aware that, in the light of experience of operating the new monitoring fee regime, the number of proposed chargeable monitoring visits due to be undertaken has been reviewed and increased. In regard to the income generated through such chargeable monitoring activity, we do not feel it would be appropriate to recommend any further increase in the target for income as we are mindful that there is a balance to be struck between generating income and developing and maintaining good relationships with operators.

However, we **recommend** that outstanding fees for monitoring visits are pursued vigorously.

1.1.3 ICT resources

We have identified that there would be significant benefits from the further development of ICT to support the service. An IT system to record and share information across the relevant Development Services Directorate and Legal Services Unit Teams would be advantageous to the development control process, supporting better communication and speeding up response times allowing issues to be resolved quickly. Linking IT systems with the Geographical Information System, complaints information and photographic information about sites would aid officers in the monitoring, reporting, and resolution of both authorised and unauthorised activities and operations on sites.

This development would increase the efficiency of the service and enable the Team to accommodate the anticipated increase in workload arising from extensions to extraction within the Minerals Core Strategy and the identification of additional sites for monitoring.

Therefore, we **recommend** the preparation of a stand alone business case for this ICT development to be considered separately from the development of the Planning Portal.

#### 1.1.4 Safety

We are concerned about abuse suffered by Planning Regulation Team officers, whilst performing their duties and responsibilities on site. We **recommend** that the measures to safeguard Team officers are reviewed in the context of the County Council's relevant corporate policies and that all necessary measures are implemented.

#### 1.1.5 Working Together

We recognise that the service's primary internal working relationship is with the Legal Services Unit and are pleased to see that this relationship continues to develop over time, including through the implementation of the recommendations from the Business Process Review.

The service appears to have positive working relationships with a variety of other agencies, although we have not sought evidence to corroborate this.

We **recommend** that the service ensures that it has mechanisms in place to obtain feedback from these agencies and use this information to help improve relationships and service delivery.

#### 1.1.6 Business Planning and Performance Management

We consider that it is important to explain the contribution of the service in the relevant strategies and plans, including to the themes and performance indicators of the Local Area Agreement. We also consider that it is important to reference the relationship of the service with local Members, in the context of promoting public acceptance of the development control process.

As Members are likely to be contacted by constituents on planning regulation matters, we **recommend** that there be clear arrangements for providing general service information to Members, with specific information on local planning regulation issues. We also feel that new Members, in particular, would appreciate information on the service and what to do if they receive a development control related complaint.

We are aware that there are no Key Performance Indicators specifically relevant to the work of the Planning Regulation Service but that there are four Local Performance Indicators. These have specific targets set for the next three years on matters surrounding the resolution of alleged planning breaches, responses to complainants, complaints investigation and site visits. Internal officer process reviews have sought to change processes to facilitate improvements, and the established Team structure also helps separate the monitoring and enforcement processes to ensure dedicated teams focus on their relevant workloads. However, officers remain flexible and can investigate and monitor both disciplines to help achieve the optimum performance.

We support the continued development of local performance management arrangements to enable service improvement and **recommend** that the County Council considers making appropriate representations to support the development of a Key Performance Indicator for monitoring.

It is noted that 95% of breaches of planning control were resolved by negotiation in accordance with the County Council's Policy on Monitoring and Enforcement

We **recommend** that the Service continue to identify and expedite any formal enforcement action that is the most cost effective in terms of the overall benefits arising from remedying a breach of planning control, which provides lasting, effective solutions to harm that may or has been caused by a breach in planning control.

We **recommend** that the Planning Regulation Service are encouraged to resolve the remaining 5% of breaches of planning control by negotiation rather than undertaking formal action and prosecution which is punitive in nature, often incurs excessive costs and ultimately without remedying the breach.

#### 1.1.7 Lobbying

We note that under proposed new Planning Law, it would be an offence to operate any development without planning consent and that this would alleviate some of the constraints to the effective operation of the service. Responsibility may fall to the County Council to uphold the provision of the law. However, the issue of Environmental Courts is not dealt with in this new law.

We **recommend** that the County Council considers making appropriate representations in support of this new law and the development of Environmental Courts.

## 2. Setting the Scene

- 2.1 At its meeting on 19 October 2007, the Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel considered a referral from the Planning Committee about the Planning Regulation Service. The service is part of the Development and Waste Management Business Unit of the Development Services Directorate.
- 2.2 The Annual Report of the Planning Regulation Service, which had been presented to the Planning Committee at their meeting on 12 July 2007, was submitted to the Panel. They were asked to consider undertaking an in depth review of the service.
- 2.3 In considering this referral, the Panel learned that the service exercises control over mineral and waste development in order to minimise serious harm to public amenity and the environment, under the Town and Country Planning Act 1990. This includes taking enforcement action when necessary.
- 2.4 A review of Planning Enforcement had been undertaken by the Department for Communities and Local Government and the findings published in November 2006. The conclusion was that it was not necessary to make any significant changes to the current system of Planning Enforcement. The controls therefore remain discretionary and, in Staffordshire, operate on a two-tier County Matter and District Matter system (minerals and waste activities being Mineral and Waste County Matters respectively).
- 2.5 Mineral and waste activities differ from other forms of built development as they can continue over many years, can be large in scale and have continuing potential for unacceptable adverse environmental impact. Officers advised the Panel that public acceptance of the development control process was undermined if unauthorised development, in planning terms, was allowed to proceed without any apparent attempt to intervene before serious harm resulted.
- 2.6 At this point, Staffordshire had 203 active mineral and waste sites requiring some degree of monitoring, with some sites having several planning permissions. There were also a further 156 closed, dormant, restored or unauthorised sites in the county. Members were informed that it is not possible, effective or efficient to monitor all existing sites on a daily basis or to carry out continuous surveillance of land and property to seek to prevent or avoid unauthorised activities taking place. Officers explained that the authority does prosecute on some occasions but that 95% of breaches of planning control can be resolved through negotiation. The level of service provided is directly related to the resources provided to carry it out.
- 2.7 Some monitoring activity is chargeable (specifically that relating to mineral extraction and landfill operations). In 2006/2007, 96 sites were eligible for a site monitoring visit with fee. There were 154 site visits made to 86 sites. Of a total amount due of £41,184, the amount of fees paid was £34,368 leaving £6,816 in outstanding fees.
- 2.8 In response to queries about the potential for efficiency savings, Members were advised that significant savings had already been made over a period of time.

There was no statutory duty to monitor sites but any further savings requirement might have implications for the level of service and therefore risk implications for the protection of the environment.

- 2.9 Given the discretionary nature of the work and the importance of public acceptance of the development control process, the Panel agreed that a Scrutiny Working Group would be formed in order to undertake a review of the Service.

### **3. Terms of Reference**

- 3.1 The key objective for the Scrutiny Working Group was to review and make constructive recommendations on the level and standard of the Planning Regulation Service, in relation to mineral and waste planning, provided by the County Council, including the resources available and required to deliver the service.

- 3.2 The scope of the review was to:

- a) gain an understanding of the Policy and Legislative Framework surrounding the Planning Regulation Service;
- b) gain an understanding of the roles and responsibilities of the County Council in relation to planning regulation;
- c) determine the standards and performance framework against which the Planning Regulation Service operates;
- d) consider the support the Planning Regulation Service receives from other Directorates/Teams within the County Council, Local Planning Authorities and external agencies, to determine if there are opportunities for partnership working to deliver the service;
- e) gain an understanding of the services complaints procedure and outcomes;
- f) determine the roles and responsibilities of external regulators of the Planning Regulation Service;
- g) consider the findings and recommendations of internal and external reviews of the Planning Regulation Service;
- h) determine if the needs and requirements of local communities and businesses are being met by the service; and
- i) determine the resources required to deliver the Planning Regulation Service, including any potential savings that could be made.

## **4. Membership**

4.1 The review was undertaken by a Working Group of the following Members of the Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel:

Mr M J Barber (Chairman)  
Mr E N Drinkwater  
Mr P Haynes  
Mrs M M Lovatt

4.2 At the request of the Working Group, Mr R Smith (Chairman of the County Council's Planning Committee) was invited to attend meetings of the Working Group as a Member with knowledge of planning issues.

## **5. Methods of Investigation**

5.1 Members of the Working Group met on several occasions between January and May 2008 to receive and consider evidence relating to this review. This included:

- a) detailed officer reports supplemented by verbal evidence;
- b) examination of good practice by other local authorities;
- c) findings of internal and external regulator reports on the Planning Regulation Service; and
- d) visits to Waste and Minerals extraction sites -

### Site 1 Wolseley Park Estate

- site which had been restored following sand extraction for use in the new Rugeley Bypass

### Site 2 Rugeley Quarry

- working site, extracting sand and gravel for several years under the terms of the planning permission

### Site 3 Land off Power Station Road

- site relocated from a site having been granted a Certificate of Lawful Use for the importation, deposit, storage, sorting, screening and transfer of inert waste for re-cycling to accommodate the route of the new bypass.

## 6. Findings

The Working Group's considerations and findings are set out below. These inform the conclusions and recommendations in Section 1 of this report.

### 6.1 Legislative Context

- 6.1.1 There are statutory powers in place for development control under the Town and Country Planning Act 1990.
- 6.1.2 The majority of mineral and waste development requires planning permission from the County Council as the Mineral Planning Authority and the Waste Planning Authority respectively and can be controlled by ensuring compliance with planning conditions in order to minimise any adverse impact or injury to amenity from or caused by the development.
- 6.1.3 It is not unlawful to undertake development without planning permission and an operator can apply for retrospective planning consent following commencement of an operation, and if it is in accordance with the Development Plan (and any other material considerations), a retrospective consent can be issued. Negotiation and discussion would take place prior to a planning application being submitted.
- 6.1.4 The Planning Act, as amended, defines the deposit of waste on land as a material change of use of land which requires planning permission from the Waste Planning Authority.

There are two levels of Waste regulations:

- must have permission to use the land for waste purposes (Town and Country Planning act, as amended); and
  - must have a waste license to deal with controlled hazardous waste (Environmental Protection Act).
- 6.1.5 A waste license (more recently referred to as an IPPC Permit) cannot be issued without a planning consent or Lawful Use Certificate being in force, however, some sites may operate a waste facility having been declared exempt from the requirement to possess an IPPC Permit.
- 6.1.6 The taking of formal enforcement action is discretionary where operations are unauthorised or where there is non-compliance with conditions attached to a planning permission.

### 6.2 Roles and Responsibilities

- 6.2.1 Members received a presentation outlining the roles and responsibilities of the Planning Regulation Service. They found that the key areas of work include:

### **Monitoring - To Control Permitted Mineral Extraction and Waste Management Facilities**

- To monitor 203 mineral extraction and waste management facilities
- To ensure sites operate with minimum of environmental impact
- To ensure operations conform to planning conditions
- To recover monitoring fees from operators when chargeable

### **Complaints - To Investigate Complaints from all Sources Relating to County Matter Development**

- To provide a front line interface with complainants
- To investigate the details of complaint
- To act courteously at all times to all complainants
- To resolve problems expeditiously

### **Enforcement - To Investigate Unauthorised Mineral Extraction and Waste Management Facilities**

- To act expediently where there is a serious impact on the amenity
- To regularise development by seeking retrospective planning applications where such applications can be supported
- To stop inappropriate unauthorised development and to require remedial works to damage due to the development.

6.2.2 The site visits undertaken gave Members an opportunity to meet the Planning Regulation Team officers, see different aspects of their work and gain an understanding of their roles and responsibilities which include:

- administration relating to site visits, monitoring fees and processing complaints;
- preparation for monitoring (e.g. checking planning permissions, conditions and site operation plans and reviewing the last site monitoring visit to ascertain if there are any outstanding issues to be addressed);
- monitoring of permitted sites;
- monitoring of unauthorised sites;
- investigation of breaches of planning control;
- attending site liaison meetings; and
- gathering evidence and preparing cases for prosecution.

## **6.3 Areas of Work**

### **Monitoring**

6.3.1 Members sought further explanation of site monitoring visit arrangements and how a decision was reached about which sites would receive a monitoring visit. They found that sites are monitored in accordance with the protocol established in the Statement of Monitoring and Enforcement Policy for Mineral and Waste Sites, which outlines a three tranche system of sites requiring 4, 2 and 1 visits per year depending on site operations. Officers explained that a monitoring site visit could also be made in response to a complaint being received.

## Complaints

- 6.3.2 The County Council must investigate all complaints received about minerals or waste activities at facilities within its jurisdiction. Where it is not responsible, it should ensure that the relevant authority is advised promptly and the complainant notified. The Complaints procedure deals with the way and speed in which complaints are handled, investigated and responded to and was internally reviewed in November 2007 in line with the key service target areas. A Guide to the Monitoring and Enforcement of Planning Control for Mineral Extraction and Waste Management Leaflet is issued to new complainants with the complaint acknowledgement letter. Complainants should continue to be informed of the findings of the investigation and advised, where appropriate, what action has or will be taken to remedy any particular problem.
- 6.3.3 Complaints can be received by or referred to the Planning Regulation Team and come from a number of sources including elected Members (County, District and Parish), members of the public, officers of the County Council, District Councils and other agencies and organisations, and from operators within the industry.

## Unauthorised Activities and Operations

- 6.3.4 Members explored in more detail the Planning Regulation role regarding unauthorised activities and operations of mineral and waste development. These are activities and operations taking place without planning permission and therefore outside planning control, with the resultant potential to cause harm to the local amenity, residents and the environment. Members noted that to undertake operations without planning permission is not illegal in itself and only after the requirements of any legal notice subsequently served are not being complied with, is a criminal offence committed for which prosecution proceedings may be commenced in the courts.
- 6.3.5 The majority of unauthorised operations are waste disposal and waste processing operations, which appear to be on the increase. This increase is possibly due to the increasing cost of waste disposal at authorised sites, currently around £15 to £25 per tonne for inert waste and £35 to £50 per tonne for general mixed waste. There is clearly money to be made from unauthorised tipping of waste and the Environment Agency together with the relevant Waste Planning Authority, are piloting new initiatives of joint working and zero tolerance in the Liverpool area. Members noted that the level of potential fine is so low that some landowners are prepared to take the risk of being investigated and incurring the cost of remedying breaches of planning control.
- 6.3.6 Members learned about the difference between fly tipping and large scale commercial waste disposal. Fly tipping is general small scale opportunistic disposal of small quantities of waste on public or open land or private land without the permission of the land owner. For public land this falls to the District and Borough Councils to deal with and undertake remedial clean up operations. For private land the cost of the remedial clean up operation falls to the landowner. Members were shown photographic slides of examples of unauthorised tipping and subsequent removal of the material. Members asked if the County Council had the authority to remove waste that had been 'dumped' on land and was informed that

removal of such waste could also cause harm and injury to the amenity, environment, and local residents and therefore negotiation was a valuable solution. In some cases it may be more beneficial to retain some material on the land with conditions including restoration conditions, than to require its removal which may in itself have its own adverse impact on amenity. Members were informed that this method of dealing with unauthorised tipping had been achieved successfully in the past.

6.3.7 Unauthorised mineral extraction, although less frequent, is often sudden and of relatively high intensity and often the result of a 'campaign' demand for a particular mineral for immediate requirement and in large quantities for projects such as road/bypass and rail construction.

6.3.8 In respect of complaints regarding unauthorised mineral and waste development, details of the operations are recorded and enquiries made to the operator to establish the exact nature of the operation. Once the exact nature and extent of the operations and activities are determined and it has been established that they constituted a mineral or waste County Matter the main aim is to either:

- regularise the operations by inviting the operator to submit a retrospective planning application where the development can be supported on planning grounds, controlled and made acceptable by the imposition of planning conditions; or
- where the operations cannot be supported on planning grounds and cannot be made acceptable by the imposition of planning conditions, for them to cease (in their current location).

6.3.9 How cross boundary, unauthorised activity is dealt with was queried and Members were informed that agreement is reached between the authorities with a joint approach to any enforcement.

6.3.10 Members noted that the Clean Neighbourhood and Environment Act had given authorities the power to impose large fines and seize equipment for unauthorised activity but catching people is very difficult and better resources and technology would be needed to deal with this. If cameras are to be used covertly, this must be done following strict procedures and for the purposes of crime prevention and detection, as before Notices are served, there is no crime involved in the breach of planning control. Where covert surveillance needs to be carried out, the County Council has a system in place whereby 12 senior officers can authorise the activities (as required under the Regulation of Investigative Power Act. These 12 officers have received training by the Legal Services Unit and Member approval is not required.

6.3.11 Officers were of the opinion that although the taking of enforcement action is discretionary, the County Council as Local Planning Authority should deal with breaches of planning control or risk losing public confidence. Complaints are treated as confidential. Although the law can be perceived as weak with regard to enforcement, negotiation can be viewed as the best course of action and the County Council has a history of effective enforcement following the service of Notices.

## 6.4 Partnership Working

6.4.1 It was highlighted to the Working Group that close working with both internal and external agencies is an important part of development control.

6.4.2 The agencies with which the Service has a relationship are:

### Internal Agencies

- Highways Authority;
- Waste Management;
- Environmental Planning;
- Rights of Way;
- Property Services;
- Regeneration;
- Animal Health; and
- Legal Services Unit

### External Agencies

- Parish Councils;
- District Councils;
- Environment Agency;
- Health and Safety Executive;
- Police;
- Consultees; and
- Other County Councils.

6.4.3 Many of these agencies are consulted for specialist advice and comments on planning applications.

6.4.4 Members found that the Legal Services Unit provide the following:

- legal and procedural advice, assistance and guidance;
- research;
- drafting and service of formal notices;
- correspondence with developers and their legal representatives;
- conduct of court cases;
- conduct of appeals - written representation and inquiries; and
- Section 106 Agreements to regularise a breach of planning control.

6.4.5 The Working Group explored the input of the Legal Services Unit in more detail. Members were provided with a copy of the Planning Policy Guidance Note 18 which stated that all authorities should ensure that there is a close and co-operative working relationship between the Planning Department and the Solicitor's/Secretary's/Chief Executive's Department. Without such an effective working relationship, formal enforcement action (which depends for its success upon speed of assessment and process) might be hampered by poor communication and misunderstanding. As a result, there can be public criticism if

statutory time-limits for taking enforcement action are allowed to expire because of an administrative delay. Members found that regular monthly meetings take place between the Planning Team and Legal Services Unit to promote this.

6.4.6 Regular working partnerships between District Councils and the Environment Agency and other regulators already exist especially through Site Liaison Committees. Members noted that officers are working on a Joint Enforcement Working Pilot in Lichfield where Staffordshire County Council, Lichfield District Council, the Environment Agency and the Health and Safety Executive have agreed to work together to improve the quality and effectiveness of waste management sites and facilities. Should the Joint Enforcement Working Pilot prove successful, it could be rolled out to other districts within Staffordshire. Members were informed that this Pilot links to the Local Area Agreement LAA Flagship priorities.

## **6.5 Delivery Resources and Issues**

6.5.1 The Working Group found that the Planning Regulation Team consists of:

- 1 Team Manager;
- 1 Principal Enforcement Officer;
- 1 Principal Monitoring Officer;
- 2 Senior Monitoring Officers; and
- 1 Regulation Information Officer.

6.5.2 At the outset of the review there was a vacancy for a Senior Monitoring Officer within the Team. This post was filled before the end of the review.

6.5.3 Minerals and waste planning issues are particularly complex and require a significant level of support from the Legal Services Unit. Members noted that a Legal Executive had been employed to assist with planning issues, alleviating staff shortage in this area and aiding effective communication with the Planning Team. In addition, enforcement officers within the Planning Regulation Team had received training in these matters to assist the significant workload generated for the Legal Services Team.

6.5.4 Members were advised that it is possible to contract legal support from external solicitors should the need arise, in the case of an emergency or to mitigate the impact of annual leave, but this is more costly. However, it was stressed that the two teams have been successful in avoiding contracting external support. For the first time, owing to staff shortages in 2007, one enforcement case only had required additional external support. Members asked how often the authority received an update on the progress of this work and found that regular e-mails were exchanged with the outside solicitors as it was their duty to keep the authority informed.

6.5.5 Members learned that a significant amount of officer time is taken up when enforcement action results in a public inquiry. In addition, despite some successes, the authority never fully recovers its expenses.

- 6.5.6 To Members' concern, they found that Planning Regulation Team Officers had suffered physical abuse on three occasions whilst performing their duties and responsibilities on site, which was above the number normally experienced. Risk assessments are carried out for all sites and this includes obtaining information from other agencies. The one full time officer enforcement officer can enrol the assistance of either one of the officers within the Team should Health and Safety requirements dictate that two officers must attend a site inspection, or where there is a possibility of verbal or physical abuse. Members offered their support for any measure necessary in relation to the personal safety of Team officers.
- 6.5.7 In respect of IT provision, there was not a specific IT system for planning regulation. Other counties had some systems but not all work areas were covered within these. The Working Group found that an IT system to record and share information across the relevant Development Services Directorate and Legal Services Unit teams would be advantageous to the development control process. Such a system would support better communication and speed up response times allowing issues to be resolved quickly. Linking IT systems with the Geographical Information System, complaints information and photographic information about sites would aid officers in the monitoring, reporting, and resolution of both authorised and unauthorised activities and operations on sites.
- 6.5.8 As part of the development of the Planning Portal, the development control configuration was under review and consideration was being given to securing the right number of modules. There was insufficient capacity to develop systems and the external development/purchase of tailored software would cost approximately £50,000. However, officers explained that sufficient business need had not been proven to be a priority for internal ICT development in order to secure improvements to the existing IT systems.
- 6.5.9 Members suggested the preparation of a 'stand alone' business case, separate from the Planning Portal, to emphasise the advantages of an all in one monitoring software module.

## **6.6 Standards and Performance Framework**

- 6.6.1 The Working Group learned about the business planning and performance management context (including associated Key Performance Indicators) for the service.
- 6.6.2 The priorities set out in the Strategic Plan were for the Team to provide fundamental contributions via the Service Delivery Plan 2007/2008 to Local Delivery of Services, Customer Centred Organisation, Investing in How our Organisation is Structured and Service Improvement.
- 6.6.3 Additionally the main drivers for improvement were:
- climate change impact (mitigation, adaptation and vulnerability mapping);
  - contributing to and, where appropriate, delivering the County Council's corporate priorities and the agreed strategic and local outcomes;
  - improve the quality and accessibility of our services;

- more integration of services to deliver sustainable outcomes
- more emphasis on development management; and
- doing more with less in a sustainable manner.

6.6.4 The services were to be delivered by:

- identifying the key objectives, targets and actions;
- identifying responsible officers/teams in the relevant Business Unit;
- individual performance targets monitored by managers;
- joint working;
- co-ordinating and organising the available resources (financial, human);
- building capacity through training and development;
- regular site visits/site inspections;
- responding to consultations in a timely manner; and
- negotiating with developers.

6.6.5 Members noted that the Waste and Minerals Core Strategies set the context for planning regulation which also fits with the priorities set out in the County Council's Strategic Plan. The Working Group considered that it is important to show the contribution of the service in the relevant strategies and plans, including to the themes and performance indicators of the Local Area Agreement. They also considered that it is important to reference the relationship of the service with local Members. As Members are likely to be contacted by constituents on planning regulation matters, the Working Group agreed that there should be clear arrangements for providing general information to Members, with specific information on local planning regulation issues. The Working Group also felt that new Members, in particular, would appreciate information on the service and what to do if they receive a development control related complaint.

6.6.6 Because of the discretionary nature of the work each authority deals with monitoring as a 'stand alone' function in a different manner. The relevant service activities and outcomes for the Regulation Team were to control unauthorised development, regularly monitor sites, handle complaints about minerals extraction and waste operations in a timely manner, improving operational standards at sites, and minimise the environmental impact of quarrying and waste management.

6.6.7 Members found that the key service target areas relevant to the Regulation Team were to monitor minerals and waste sites in accordance with the agreed standard, and to investigate and resolve complaints made about authorised/unauthorised mineral and waste activities. The agreed standard refers to the operation of the system for monitoring site visits.

6.6.8 In relation to the National Indicator set, Members were informed that there was only one indicator: NI 182 - satisfaction of business with local authority regulation services, with the potential to be relevant. However upon inquiry into the dataset for this indicator, it was found that it relates only to trading standards, environmental health and licensing. Members noted that wherever possible the Development Services Directorate aligns their local performance indicators to the national indicators.

- 6.6.9 Members asked whether there should be a common standard for monitoring and was informed that authorities are trying to achieve this through a national forum.
- 6.6.10 Looking ahead, Local Performance Indicators seek to increase the percentage of alleged breaches of planning control (complaints) resolved within 13 weeks from the 73% obtained in 2007/08 to 90% for the next three years, ensuring that from 2008/09 all complaints will be responded to within two working days, and 90% will be investigated within 10 working days rather than the 69% obtained in 2007/08.

## **6.7 Factors Affecting Performance**

- 6.7.1 The Working Group found several constraints to the effective operation of the service. These are:
- the discretionary nature of monitoring;
  - breaches being slow to resolve;
  - powers relating to land and landowners;
  - reliance on co-operation of offenders;
  - punishments and fines 20 years out of date; and
  - no dedicated environmental courts.
- 6.7.2 In regard to operations without planning permission, which are unlawful but not illegal, Members asked if there were any proposed changes in legislation to deal with this issue. Members noted that under proposed new Planning Law, it would be an offence to operate any development without planning consent and that this would alleviate some of the constraints to the effective operation of the service. Responsibility may fall to the County Council to uphold the provision of the law. However although the proposed legislation has gone through the Select Committee it still has some way to go before being passed. However, the issue of Environmental Courts is not dealt with in this new law. Members of the authority could assist with these issues by lobbying Parliamentary Members.
- 6.7.3 The Working Group highlighted extensions to current mineral extraction within the Minerals Core Strategy and asked whether this would have an impact on workload. They also found that discussion with the Environmental Agency had identified a possible 50 additional sites that were currently not on the monitoring list, which would inevitably add to the Team's workload.
- 6.7.4 In the light of experience of operating the new monitoring fee regime, the number of proposed chargeable monitoring visits due to be undertaken has been reviewed and increased. Additional sites are constantly being added to the monitoring database that increase demand on the Regulation Team.

## **6.8 Level of Performance**

- 6.8.1 It was emphasised to the Working Group that, despite the constraints, officers felt the service is performing well.
- 6.8.2 Members found that 93% of sites were visited in 2006/07 by the Planning Regulation Team. 426 formal site visits were made at 189 sites (maximum 468 visits to 203 sites). Staffordshire obtained £41,184 in monitoring fees, more than any other county with the exception of Norfolk.
- 6.8.3 Based on the annual reports presented to the Planning Committee for 2006 and 2007, the service received 114 & 129 complaints respectively for those years. Only a small percentage of these required legal enforcement and it could be reasonably inferred that the enforcement process was achieving its objective of maintaining control over development activities within Staffordshire.
- 6.8.4 With regard to the complaints procedure, all complaints were investigated. Members were provided with graphs showing the type and number of complaints received. In 2006/07, 69% of complaints were acknowledged within two working days, 77% investigated within 10 days and 63% resolved within 13 weeks. In 2007/8, the Regulation Team received 160 complaints regarding development involving mineral extraction and waste management activities. 102 complaints related to unauthorised development and were handled by the Enforcement Section and 58 complaints related to permitted sites and were handled by the Monitoring Section.
- 6.8.5 Since 2005, two complaints had been made to the Local Government Ombudsman concerning aspects of the work of the monitoring and enforcement sections within the Planning Regulation Team. Four complaints had been made to the Chief Executive under the Corporate Complaints Procedure and these had originated from transgressors whose operations had been investigated by the Team following complaints from the general public into the alleged unauthorised development. No complaints had been received from the general public concerning the performance of the Team in undertaking their duties.
- 6.8.6 Members were informed that the County Council has never had an Ombudsman complaint upheld in the last 17 years, in respect of the planning enforcement processes.
- 6.8.7 Members were reminded by the Chair of the Planning Committee that enforcement action can be both lengthy and costly and asked if there had been any successful outcomes from this process. Members were informed that there had been success with this procedure with a company that had been prosecuted for failing to sheet its lorries and that all lorries were now sheeted. Two sites were also referred to where waste had been removed following the service of Enforcement Notices and a waste disposal case where the Council was awarded £7500. Members were additionally advised that in the past the County Council had been successful with Notices being complied with. It was the more extreme cases that received most publicity.

## 6.9 Benchmarking and Costs

- 6.9.1 Members received details of the cost of the Planning Regulation Service including Legal Service Unit costs and a summary of the estimated cost of delivering the monitoring and the enforcement parts of the service by the Team. (See Appendix.)
- 6.9.2 The total expenditure of the service as supplied by the Joint Finance Team and used in the monitoring and complaints analysis did not include the costs of the Legal Services unit associated with the work of the Team.
- 6.9.3 Since April 2006, the powers had been granted by central Government to recover part of the cost of monitoring mineral extraction and waste landfill planning permissions. The fee for these inspections is charged at a rate of £288 for an active site with up to four inspections a year and £96 for a dormant site for one inspection a year. The Working Group were advised that this fee applies to 65 sites in Staffordshire.
- 6.9.4 The National County Enforcement Officers Group had produced a league table of 25 of the Shire County and Unitary authorities responsible for County Matter development showing the fees paid to each authority by operators and the level of staff resources put to the service in each authority. Staffordshire is in the top ten percent of fee gathering authorities. Using the charging system to generate an income for the County Council could also lead to the breakdown of established relationships between operators that have taken years to develop leading to Local Ombudsman complaints.
- 6.9.5 The Corporate Management Team assessment of value for money highlighted the planning function, which included the Planning Regulation Service, as providing above average value for money and stated that at the highest level the comparative spending for the planning service remains within the lowest quartile.
- 6.9.6 A business process re-engineering review of the Planning Regulation Service, in particular their interaction with the Legal Services Unit when undertaking formal action, was completed in November 2007 and highlighted that the majority of breaches of planning control (approximately 95%) were resolved by negotiation in accordance with the County Council's Policy on Monitoring and Enforcement. Members found that the review exercise had concluded that no changes in the work by the Legal Services Unit and Development Services Directorate were recommended other than an IT database and more structured monthly meetings. Whilst the review report acknowledged that some transgressors may continue to flout and prevaricate over their duty and responsibilities, officers will continue to apply pressure and mediate/negotiate a solution, even if legal action is commenced. It was the intention of the review to focus resources on those who may with a limited amount of legal pressure regularise their activities. This continues to be the case, however where breaches are substantial, all efforts will be made to regularise these matters in the shortest possible timescales.

- 6.9.7 Members were referred to the gradual expected increase in cost and noted that the figures for 2008/09 do not include Job Evaluation and also that the predicted legal fees were lower owing to the changes in the accounting system.
- 6.9.8 Members noted that the actual costs incurred to the authority for a major full annual site audit is £850.95 and the cost of an average monitoring site inspection £410.73. Members supported the view however, that a pro-active preventative approach is cheaper to the Authority in the long term, as dealing with complaints was proven to be more expensive and lowers the opinion of the general public.

## **7. Implications**

- 7.1 Resources and Value for Money – The level of service provided is directly related to the resources provided to carry it out; The report contain a recommendation supporting ICT development aimed at improving efficiency.
- 7.2 Equalities and Legal – The service is aimed at ensuring the relevant legislation is adhered to.
- 7.3 Risk – Reducing the level of service might put at greater risk the protection of the environment; the County Council's reputation might be affected by public perceptions of the development control process.

## **8. Acknowledgements**

- 8.1 Members of the Working Group would like to acknowledge the contribution of participants throughout this review and extend their thanks to:

Paul Wilcox - Head of Development and Waste Management  
Doug Walker - Regulation Team Manager  
Martyn Webb - Principal Enforcement Officer  
Mark Cooper-Adams - Principal Monitoring Officer  
Lisa Delrio - Team Senior Solicitor, Planning and Regulation  
Nick Pountney - Scrutiny and Performance Manager  
Sue Halcrow - Senior Support Officer, Member and Democratic Services  
Rebecca Redman - former Scrutiny and Performance Support Officer  
Sarah Garner - Scrutiny and Performance Support Officer.

**Councillor Jack Barber**  
**Chairman of the Planning Regulation Service Scrutiny Working Group**  
**August 2008**

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## List of Appendices/Background Papers

Members were provided with material for information and preparation for meetings of the Working Group as follows:

- Enforcement Concordat (1998) Cabinet Office
- Enforcement Concordat – The Principles of Good Enforcement: Policy and Procedures
- Enforcement Concordat: Good Practice Guide for England and Wales (DTI) (1998)
- Development Services Directorate – Planning Policy and Regulation (Statement of Monitoring and Enforcement Policy (2003)
- Circular 10/97: Enforcing planning control: legislative provisions and procedural requirements (2006) ODPM
- Planning Policy Guidance Notes – Enforcing Planning Control (1991)
- Development Services Directorate – Breaches of Planning Control: Procedure following a complaint, Dealing with Breaches of Planning Control; and Statutory Notices Available to Remedy a Breach – Summary Guide (2008)
- Development Services Directorate – Monitoring and Enforcement Reference Manual (2006)

The following background papers were used in the preparation of this report:

- Minutes of the meeting of the Planning Committee held on 12 July 2007
- Minutes of the meeting of the Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel held on 19 October 2007
- Notes of the meetings of the Planning Regulation Service Scrutiny Working Group held on 18 January, 13 March, 3 April and 14 May 2008

**REGULATION SERVICE****Cost of Service**

	<b>Actuals</b>				<b>Predicted</b>	<b>Budget</b>
	<b>2003/04</b>	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>
	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
<b>EXPENDITURE</b>						
Employees	142,686	139,645	147,512	210,553	195,199	211,300
Direct Action	208,240	0	16,723	0	0	0
Transport	9,512	6,045	7,585	6,824	8,683	9,000
Supplies & Services	5,839	1,520	13,495	13,027	15,638	62,700
Support Services	59,200	53,300	37,600	48,400	59,850	42,550
Insurance(Non Liability)	1,903	1,956	2,719	2,190	738	1,000
<b>TOTAL EXPENDITURE</b>	<b>427,379</b>	<b>202,465</b>	<b>225,634</b>	<b>280,994</b>	<b>280,108</b>	<b>326,550</b>
					<b>A</b>	
<b>INCOME</b>						
Fees & Charges	0	0	0	-40,416	-38,880	-61,000
Other Income	-14,000	-3,220	-4,598	-2,191	0	
<b>TOTAL INCOME</b>	<b>-14,000</b>	<b>-3,220</b>	<b>-4,598</b>	<b>-42,607</b>	<b>-38,880</b>	<b>-61,000</b>
<b>TOTAL FOR UNIT</b>	<b>413,379</b>	<b>199,245</b>	<b>221,036</b>	<b>238,387</b>	<b>241,228</b>	<b>265,550</b>
Legal Fees (directly charged plus apportionment from Legal Division)	42,048	63,817	77,957	100,039	115,425	28,393
<b>TOTAL FOR SERVICE</b>	<b>455,427</b>	<b>263,062</b>	<b>298,993</b>	<b>338,426</b>	<b>356,653</b>	<b>293,943</b>

## **Regulation Service Finance Report**

### **Total Expenditure**

It should be noted that 2008/09 budget for supplies & services includes £50,000 legal fees budget which was previously charged elsewhere within the department but is now directly charged to the unit.

If you discount this then the expenditure budget reduces to £276,550 which is a reduction in comparison to 2006/07 and 2007/08.

### **Total Income**

2008/09 income budget has been increased to reflect the anticipated additional monitoring activity.

### **Total for Unit**

Again if the £50,000 legal fees budget is discounted then the total cost for service would be £215,550 which is below the cost for the previous three years.

### **Total for Service**

It should be noted that 2008/09 budget for supplies & services includes £50,000 legal fees budget which was previously charged elsewhere within the department

The 2008/09 legal fees budget reflects the transfer of budget (£50,000) to supplies and services.

The net total budget for 2008/09 is lower than actual outturn for the last three years.

It should be noted that the need to incur external legal support can vary considerably from year to year depending upon circumstances of individual cases.