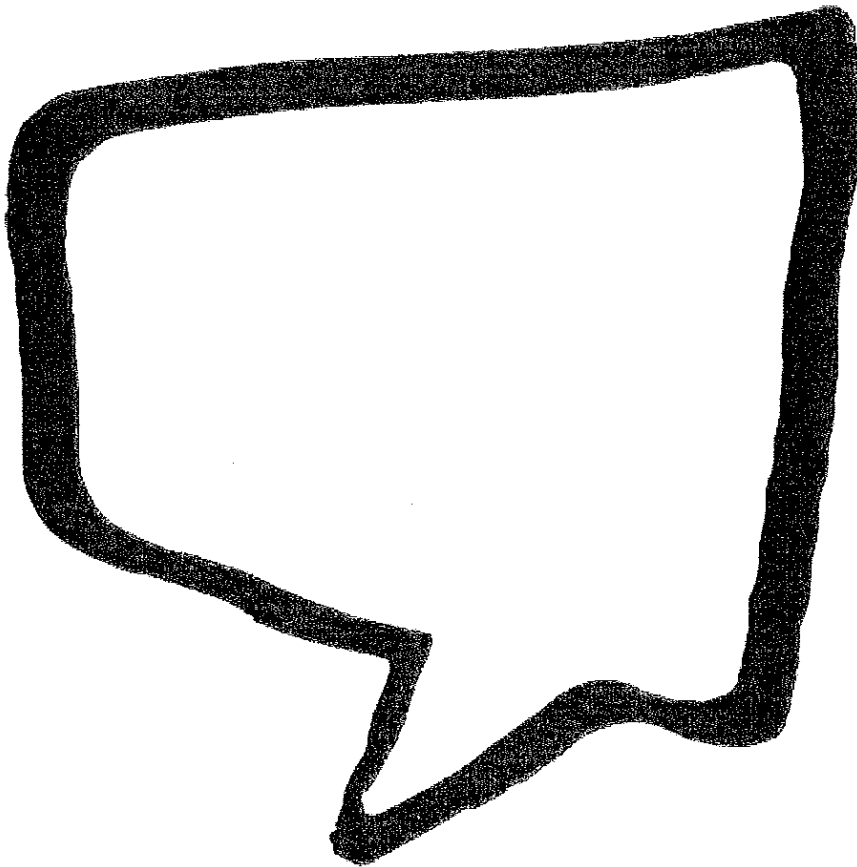


Probity in Planning

Rossendale Borough Council

Audit 2007/08

November 2008



Summary report

- 1 Recent high profile cases have highlighted weaknesses in the planning process at some authorities. Planning decisions can have a huge impact on the public, not only on land values but also on important quality of life issues such as the physical environment and economic prosperity.
- 2 For these reasons planning applications can become an emotive issue. This increases the need for the proper management of decision making and relationships with third parties.
- 3 Local authorities also have an important task in reassuring the public that they maintain high ethical standards and strong. They also need to respond to the changes in ethical standards and governance which central government is driving through. A strong ethical governance culture is essential to underpin robust planning arrangements.
- 4 We therefore linked our review of planning with a review of ethical governance.

Background

- 5 We carried out a review of Probity in Planning at Rossendale several years ago, as part of a national programme of Audit Commission studies. This work resulted in an action plan which outlined the issues Rossendale needed to address.
- 6 The Authority has until recently been subject to specific review in relation to the time taken to process planning applications. Various other issues have also arisen in recent years in relation to the operation of the planning process. For these reasons, we included in our 2007/08 audit plan for Rosendale included a review of current arrangements for securing probity in planning, which will also inform our current review of ethical governance arrangements at Rossendale.

Scope, objectives and audit approach

- 7 The objectives of this review were as follows.
 - To review the progress made by the Authority in addressing the issues raised in our previous audit of Probity in Planning, and any that have arisen subsequently.
 - To review current performance in relation to the handling of planning applications, including action taken to resolve complaints.
 - To review current initiatives designed to secure improvements.
- 8 Our approach consisted of the following steps.
 - A meeting with the Chief Planning Officer, to review progress in implementing the action plan arising from the previous audit and in addressing any subsequent concerns.

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Status of our reports

The Statement of Responsibilities of Auditors and Audited Bodies issued by the Audit Commission explains the respective responsibilities of auditors and of the audited body. Reports prepared by appointed auditors are addressed to non-executive directors/members or officers. They are prepared for the sole use of the audited body. Auditors accept no responsibility to:

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 - any third party.
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- A review of the Authority's latest performance indicators, complaints made in relation to planning over the last two years, and action taken to resolve them.
- A review of relevant documents, including the proposed revised Scheme of Delegation.
- Interviews with senior Authority officers, elected Members and external stakeholders, to obtain their views on progress and any ongoing areas of concern.

Main conclusions

- 9 The Authority has made very good progress in improving its arrangements for ensuring probity in the planning process since our previous audit review in 2002/03. The majority of actions set out in that action plan have been addressed, and action is in hand to deal with the remainder.
- 10 There is a new sense of leadership in the Planning function that is engendering significant cultural change. This has brought about improved performance in processing planning applications and securing Section 106 ('s.106') agreements which enable the local community to benefit from major development schemes.
- 11 Working relationships between Members, officers and external stakeholders are much improved, and the Council is taking steps to engage more effectively with the local media. Members on the Development Control Committee (DCC) in particular are now more willing to undertake training to enable them to fulfil their responsibilities more effectively. All this has led to a greater success rate for the Authority in defending planning decisions on appeal, and to a reduction in the level of complaints to the Planning Ombudsman from 15 in 2006 to 1 for the first three months of 2007.
- 12 However, there are still some areas for development. These include the need to finalise the Scheme of Delegation and Member Code of Conduct, update the Local Development Framework, and improve the reporting arrangements for Section 106 agreements.

Overall progress since 2002/03

- 13 A new Head of Legal and Democratic Services was appointed in January 2006, and took over responsibility for the planning function as Head of Legal and Planning in October 2006. Since then the structure and function of the Planning Service has been reviewed and an Improvement Plan has been produced and implemented.
- 14 The Council adopted a new Democratic Renewal Constitution in March 2005, which includes a Planning Code of Good Practice and a Scheme of Delegation (SoD). Member training has taken place on the new constitutional arrangements, the Planning Code and the SoD, but both the latter documents are being revised at present. The Planning Code of Good Practice is to be replaced by a Planning Code of Conduct, to reinforce the importance of adherence to appropriate standards when dealing with planning applications. This needs to include guidance for those Members who may occasionally attend DCC as substitutes for regular Planning Members.

Summary report

- 15 Following poor performance on planning PIs in 2006, the SoD was revised to improve levels of delegation and working relationships between Members and officers. The revised version was considered by a Constitutional Working Group in October 2007 but has yet to go to Cabinet. This needs to be expedited in order to help optimise performance on planning PIs and hence the Council's entitlement to Planning Delivery Grant.
- 16 The new management arrangements in the Planning Service, coupled with changes in the membership of the DCC, have resulted in a major cultural shift from the secretive and opaque atmosphere that prevailed at the time of our previous audit review to a much more open and transparent approach. The Head of Legal and Planning and the Chair of the DCC provide dynamic leadership that has led to much better working relationships between Members and officers. This in turn has acted as a catalyst for significant improvements in policy, procedure and performance. For example, the Improvement Plan included a review of the arrangements for securing s. 106 agreements. This has, among other things, resulted in retrospective agreements being put in place for twelve long-standing major planning applications where no such agreements had originally existed.
- 17 Relationships between the Council's Planning Service and external stakeholders such as the Rossendale Civic Trust have also improved dramatically in recent years. The Trust considers that this improved relationship could usefully be extended to include such bodies as the Council for the Protection of Rural England (CPRE). The CPRE has a local branch in the area, and the Trust feels that they would make a positive contribution to the further development of the planning process in Rossendale.
- 18 The Council is also taking steps to foster improved dialogue with the local media. Meetings have taken place with media representatives, and progress in this area is being monitored.
- 19 A new corporate performance management system (COVALENT) and planning management system (Northgate M3) were introduced during 2007, together with better systems for monitoring planning performance and file control.
- 20 All Council Members have basic training on planning issues as part of their induction training, in case they have to act as 'substitutes' on the DCC. A good range of technical training is provided for regular DCC Members, and with one or two exceptions they are now much more willing to participate in this. All Members receive an annual review of their training and development needs through a process known as Personal Performance Planning (PPP), although there are no formal arrangements in place for reviewing Member performance. The Council might usefully consider introducing a performance appraisal scheme for Members, although this may evolve anyway as part of future legislative developments.
- 21 The Council's Standards Committee has no significant governance or probity concerns at present. However, the Chair of the Committee highlighted a general need for Members to become more commercially aware, and to have a better appreciation of the needs of the local business community while observing the need for statutory compliance. Also, some Members may need additional help in understanding and extracting relevant issues from Government papers, audit reports and Standards Board publications, etc.

- 22 The Council is achieving a generally better success rate in defending appeals against planning decisions. The Head of Legal and Planning provides the DCC with regular feedback on issues arising from appeals, and this acts as a useful form of training for DCC Members.
- 23 Members are now giving their reasons for overturning officer recommendations, and these are recorded in the minutes of DCC meetings. The use of site visiting to help assess planning applications is also better controlled. Although these are the norm for applications decided by the DCC, alternative methods such as pictures and montages are used as well. Members travel to site visits in an officially-provided bus, and unofficial site visits by individual Members are discouraged. Officers record proceedings at site visits, and ensure that any lobbyists attending are not allowed to exercise undue pressure on Members.

Areas for development

- 24 The following issues need to be addressed in addition to those described above.
 - The Local Development Framework (LDF) has still to be updated. The Core Strategy is to be completed this year, and a revised Local Development Plan (LDP) is to be prepared by 2010.
 - Regular reports should be made to DCC on the progress of all s106 agreements.
 - When the provisions of an s.106 agreement have been fulfilled, a closing statement should be issued to the developer concerned.
- 25 In addition, the following actions remain outstanding from the 2002/03 Action Plan.
 - guidance on information disclosure has not yet been produced (R21).
 - while good progress has been made in developing a policy framework for areas that s.106 agreements should cover, this needs expanding to include the provision of social services facilities. This should form part of the updated LDF, and may need input from Lancashire County Council. (R24)
 - more work is needed on developing costing mechanisms to support and inform the s.106 policy framework (R27)

Planning performance

- 26 The Council's performance in processing planning applications has improved to the point where it is no longer subject to 'special measures'. Government targets for the percentage of 'minor' applications processed within eight weeks of receipt have gradually increased from 55 per cent in 2003/04 to 65 per cent in 2006/07, while the percentage targets for 'other' applications have increased from 70 per cent to 80 per cent over the same period. However, the Council's actual performance has comfortably exceeded these targets throughout this period.
- 27 In 2007/08, performance in processing major planning applications exceeded the Government target for the first time in four years. For that year, the target was 60 per cent of applications processed within 13 weeks of receipt. The Council's actual performance was 62 per cent.

Summary report

- 28 It is important to ensure that, when considering planning applications, an appropriate balance is maintained between the quality and speed of decision-making. It is often necessary to call applications in for further consideration of contentious issues, and members of the public also have the right to object to planning proposals on various grounds. However, the ease with which such processes can be initiated has led in the past to decisions on some applications being unduly delayed.
- 29 The Council proposes to amend its Scheme of Delegation call-in procedures, so as to require:
- 'call-ins' by Members to be requested by both a ward Member and a nominated 'call-in' Member
 - 'call-in' requests by members of the public to be supported by six objectors, instead of three as at present
- 30 These new arrangements should help ensure that valid concerns receive appropriate consideration while inappropriate objections are avoided. However, their operation should be monitored to ensure they are effective.

Handling of complaints

- 31 The level of complaints made against the Council's planning decisions is reducing. Seventy three complaints were received in 2006/07, but this went down to 47 in the first ten months of 2007/08.
- 32 No comparative information on complaints was readily available at the time of our audit. However, one possible indicator is that in 2007/08 the Authority had the lowest number of total planning appeal decisions, and one of the lowest percentages of decisions revised on appeal, of all its 'nearest neighbours'. It also has a very low number of planning appeals, and a good success record in defending such appeals, compared to all District Councils nationally. This suggests that the quality of Rossendale's planning decisions is good, and that there are relatively little grounds for justified complaints.
- 33 No major probity issues were identified in the complaints received. The majority of complaints concerned administrative delays or failure to respond to correspondence or telephone calls promptly. The complaints register has been analysed to identify any learning points, mainly concerning communications with clients and validation of development descriptors, and these have been disseminated to the staff concerned. ✓

Referrals to the Ombudsman

- 34 Complaints made to the Ombudsman about planning matters in Rossendale have reduced from 15 in 2006 to 1 for the first three months of 2007. Once again, no major probity issues have been identified among the complaints received.
- 35 The average time taken to respond to Ombudsman complaints remains high in relation to other Authorities' performance, but is improving. The Council took an average of 52 days to deal with each complaints in 2005/06, but this had improved to 41.1 days in 2006/07. ✓

- 36 The Ombudsman has acknowledged Rossendale's good work to put new complaints-handling procedures in place, and has praised the Council's openness and willingness to take action to resolve problems.

The way forward

- 37 We have included a set of recommendations below. These aim to consolidate any actions outstanding from our previous audit review in 2002/03 with areas we have identified for development this year.
- 38 The Council may wish to use these to prepare its own action plan, to build on the excellent progress it has made in modernising its planning function and improving its planning performance over the last few years.

| Recommendation | |
|----------------|--|
| R1 | Revise the Member Code of Good Practice into a Member Code of Planning Conduct (to include the use of 'substitutes') and develop an Officer Code of Conduct. |
| R2 | Agree and implement the revised Scheme of Delegation. |
| R3 | Establish an effective working relationship with the Council for the Protection of Rural England (CPRE). |
| R4 | Draw up an engagement strategy to govern relations with the local media. |
| R5 | Monitor and appraise Member effectiveness and related training needs, including those of 'substitute' DCC Members. |
| R6 | Provide training to Members to help them develop their business knowledge and awareness. |
| R7 | Complete the Core Development Strategy and the Local Development Plan by 2008 and 2010 respectively - link to development of s.106 policy framework. |
| R8 | Ensure that regular progress reports and closing statements are produced for Members, officers and developers in respect of all s.106 agreements. |
| R9 | Complete the remaining actions of the 2003 'Probity in Planning' Action Plan relating to production of guidance on information disclosure, inclusion of social services provision in the s.106 policy framework, and the development of costing mechanisms to support and inform this framework. |
| R10 | Monitor the operation of the revised arrangements for public 'call-in' of planning applications. |

Appendix 1 – Action plan

| Page no. | Recommendation | Priority 1 = Low 2 = Med 3 = High | Responsibility | Agreed | Comments | Date |
|----------|---|--|----------------------------|---------|--|---------------|
| 8 | R1 Revise the Member Code of Good Practice into a Member Code of Planning Conduct (to include the use of 'substitutes') and develop an Officer Code of Conduct. | 3 | Head of Legal and Planning | Yes | Report will be taken through the Governance working group, the Standards Committee and full Council We do have an employee code of conduct. | February 2009 |
| 8 | R2 Agree and implement the revised Scheme of Delegation. | 3 | as above | Yes | As above. | February 2009 |
| 8 | R3 Establish an effective working relationship with the Council for the Protection of Rural England (CPRE). | 1 | as above | Yes | Contact will be made with CPRE, and regular consultation meetings will be set up. | December 2008 |
| 8 | R4 Draw up an engagement strategy to govern relations with the local media. | 2 | as above | Partly. | Meetings have already taken place, and a de-brief following committee has been set up. Meetings are being arranged with the editor of the free press. | Immediate |
| 8 | R5 Monitor and appraise Member effectiveness and related training needs, including those of 'substitute' DCC Members. | 2 | as above | Yes | Personal development plans have been completed for all Members. Development Control training for DC members is being arranged, and will cover training for substitutes. Feedback will be actively sought to review effectiveness. | Immediate |

Appendix 1 – Action plan

| Page no. | Recommendation | Priority 1 = Low 2 = Med 3 = High | Responsibility | Agreed | Comments | Date |
|----------|---|--|----------------|--------|---|----------------------|
| 8 | R6 Provide training to Members to help them develop their business knowledge and awareness. | 2 | as above | Yes | This will be added to the Member training plan and will be delivered by March 2009. | March 2009 |
| 8 | R7 Complete the Core Development Strategy and the Local Development Plan by 2008 and 2010 respectively - link to development of s.106 policy framework. | 3 | as above | Yes | LDS timetable will be forwarded to you. This is what we are working to. | As per LDS timetable |
| 8 | R8 Ensure that regular progress reports and closing statements are produced for Members, officers and developers in respect of all s.106 agreements | 2 | as above | Yes | To be implemented for all completed S106 agreements from Oct. | October 2008. |
| 8 | R9 Complete the remaining actions of the 2003 'Probity in Planning' Action Plan relating to production of guidance on information disclosure, inclusion of social services provision in the s.106 policy framework, and the development of costing mechanisms to support and inform this framework. | 2 | as above | Yes | LCC will be approached regarding Social Services recommendation. | March 2009 |
| 8 | R10 Monitor the operation of the revised arrangements for public 'call-in' of planning applications. | 2 | as above | Yes | Monitoring will commence for period March 2008 on wards, with reports to O and S performance committee. | Immediate |

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