

<b>Scrutiny Committee</b>	
<b>Meeting Date</b>	23 September 2021
<b>Report Title</b>	Planning Support – Erroneous Planning Decisions
<b>Lead Officer</b>	Larissa Reed – Chief Executive
<b>Classification</b>	Open
<b>Recommendations</b>	1. That the Committee notes the background and actions being taken to remedy the publication of 5 erroneous planning decisions.

## **1 Purpose of Report and Executive Summary**

- 1.1 To provide the Committee with the background to the recent publication of 5 erroneous planning decisions and an update on action being taken to ensure that lessons are learnt, and processes improved to safeguard against any future incident.

## **2 Background**

- 2.1 The Planning Support Manager was alerted on Thursday 19 August at 14:15pm of an issue with regards to a decision notice that was placed on Public Access (PA) which clearly contained content that was inappropriate.
- 2.2 The ICT team, who provide technical support for the system were contacted to investigate the origin of the document and it was immediately removed from public view. The document had been placed on PA at 11:53am and was removed 14:37pm.
- 2.3 The ICT team were quickly able to establish that the system configuration was erroneously set to save documents being worked on within the Test system to the Live Document Management System (DMS). When decision notices are saved into the live DMS they are automatically published onto PA and viewable by the public.
- 2.4 Whilst the system configuration was immediately rectified this meant that the testing that had been carried out in the test system had placed 6 erroneous decisions onto the live PA site. All 6 erroneous decisions were removed by just after 3pm.
- 2.5 Email notifications of the decisions were not sent to those tracking the applications and knowledge of the decisions was limited to anyone that had independently gone into PA to view details of the applications in the period from 11.53am to 3pm. The council has no means of tracking if or how many individuals might have viewed the decisions.

2.6 Of the 6 erroneous decisions 5 related to Swale Borough Council:

21/500150/FULL - The Wheatsheaf, 90 East Street, Sittingbourne

21/500204/FULL - Old House At Home, 158-162 High Street, Sheerness

21/500173/FULL - Land East Of Hawes Woods, High Oak Hill (Happy Pants)

21/500306/FULL - 25 Chaucer Road, Sittingbourne

21/500222/FULL - Grove End Farm, Bredgar Road, Tunstall

2.7 To understand the legal implications and options for progressing the erroneous decisions a legal view was sought from Mid Kent Legal Services which initially identified two possible options.

1, To hold that in the absence of any authority to make a decision the decision notices were ultra vires and therefore are not valid/binding decisions.

2, To hold that the decision notices, albeit issued in error, represent a legally binding decisions and seek to quash the decisions through the process of judicial review before issuing the correct decisions.

2.8 To gain clarity regarding the risks associated with each option Counsel opinion was sought with advice received on the 25<sup>th</sup> August. That advice firmly advised against option 1 with option 2 held to be the quickest, easiest, cheapest and cleanest means to resolve the error.

2.9 The legal advice cited relevant caselaw supporting the argument that if a planning permission has been granted, there is no power to “withdraw” that planning permission on the basis that there has been an administrative error at some stage in the decision making process and that developers are generally entitled to rely on a grant of planning permission as valid and lawful unless a court has decided otherwise.

2.10 There are also numerous examples of local planning authorities issuing decisions by mistake with the Courts having shown a willingness to quash these decisions in order to correct the mistake by means of Judicial Review.

2.11 In line with that advice Mid Kent Legal Services were directed to commence proceedings for Judicial Review and a letter sent to the applicants affected to apologise for the error and outline the council’s intention to quash the erroneous decision. Copy provided as appendix A.

2.12 In progressing option 2 there was a requirement for the council to place the erroneous decision back on PA, including the inappropriate comments.

2.13 The timing of the letter to applicants, re publishing on PA of erroneous decision notices, member briefing and press release was coordinated and completed on the 7<sup>th</sup> September, with Judicial Review claims issued in the High Court on the 10<sup>th</sup> September.

- 2.14 The legal process is expected to take 2-3 months, with no requirement for a physical hearing. The cost is estimated at £8,270.
- 2.15 Given the significant impact of the error an investigation into the incident is being undertaken to identify any structural or process related weaknesses in the system. That Investigation is continuing and will report interim findings by the 17<sup>th</sup> September.
- 2.16 Without prejudice to the investigation report and any recommendation that may follow, the Planning Support Manager has discussed the error with the member of staff that entered the inappropriate comments within the erroneous decisions, an experienced member of staff who has previously undertaken similar testing (successfully) in the past.
- 2.17 In undertaking the testing the member of staff had no notification or indication that their work was not contained completely within that Test system. Nevertheless, they fully recognise the inappropriateness of the wording and deeply regret the impact that their action has had on the Council and Planning Support Service.
- 2.18 The incorrect system configuration appears to stem from an error which happened at some point in the last few months when files were copied from one part of the system to another. This error created two separate commands within the system to post saved documents into the live DMS.
- 2.19 As part of standard operating procedure when preparing for testing, the ICT service created a mirror of the live system to copy across to the test system. In keeping with that procedure ICT deleted the known command instructing the system to save documents to the live DMS.
- 2.20 However, ICT did not delete (because they did not know about) the second, erroneous, command. Therefore, this command remained active in the test system and so, unknown to the user, acted to publish the test information as soon as it was saved.
- 2.21 ICT have since amended their standard procedures to perform a more comprehensive check of system configurations when preparing test files.
- 2.22 The question of precisely how this second, erroneous, command came to be present in the system is still under investigation. This investigation is being carried out with the support of the external software provider.

### **3. Service Background**

- 3.1 The Mid Kent Planning Support Service is one of a number of shared services operating through Mid Kent Services (MKS) and has been operational since 2014.

- 3.2 The single combined planning support shared service is formalised with the relationship and responsibility of the partners (Swale BC and Maidstone BC) captured within a Collaboration Agreement.
- 3.3 The stated intention within the agreement is for the Authorities to work together on a non-commercial basis with neither party to hold itself as the agent or servant of the other.
- 3.4 The service, initially shared with Maidstone and Tunbridge Wells did experience significant issues with performance during a difficult implementation phase (resulting in Tunbridge Wells withdrawing) but has for the past 5 years performed well, with performance routinely reported to members through the corporate performance monitoring arrangements within Swale BC.

Appendix C shows the current and previous performance of the Mid Kent Planning Service.

- 3.5 Additional oversight of service performance, along with that of other shared services is provided through the governance arrangements for Mid Kent Services which sees performance and cost scrutinised on a quarterly basis through a Shared Service Board (S151 Officers) and Executive Board (CEO's).
- 3.6 Oversight of delivery and direction of Mid Kent Services is provided by the MKS Board (Leaders) with all decision making referred to individual sovereign authorities.
- 3.7 There have been no performance or service issues concerning planning support raised through these forums since 2016 and the regular liaison meetings with the Head of Planning and representatives from the planning team (essentially the client for planning support) report a generally high level of satisfaction with the service received.
- 3.8 The service validates on average 1800 planning applications each year for Swale BC and consists of a shared team (transferred from Swale and Maidstone BC) of 15 FTE.

#### **4. Appendices**

- 4.1 The following documents are to be published with this report and form part of the report:
  - Appendix A: Letter to applicants
  - Appendix B: copy of decision notices
  - Appendix C: Performance data

#### **5 Background Papers**

None