

SCRUTINY
19 SEPTEMBER 2022

OFFICER REPORT ON THE USE OF PLANNING CONSULTANTS

Cabinet Member(s): Cllr Richard Chesterton, Cabinet Member for Planning and Economic Regeneration

Responsible Officers: Richard Marsh, Director of Place.

Reason for report: This report addresses the request, made through Scrutiny, for a report pertaining to the use of “Planning consultants.” The request sought “an initial report from officer explaining the uses, spending on and the processes for procurement. This includes the range of uses to which consultants are put” and included the following areas of focus:

- Masterplans and Neighbourhood Plans
- Technical work within the emerging Local Plan
- Viability Assessments
- Appeals
- Expert opinion especially for Planning Committee and Development Control decisions
- Staffing vacancy cover

This report covers each of these topics in turn.

RECOMMENDATION: The Committee is asked to note the information below.

Financial Implications: No financial implications arise from this report.

Budget and Policy Framework: This report sits within the current budget and policy framework.

Legal Implications: No legal implications arise from this report.

Risk Assessment: No risks accrue directly from this report – although the report does reference a current reliance upon agency staff in some professional roles owing to current market conditions and difficulty in recruiting and retaining appropriately skilled and qualified staff.

Equality Impact Assessment: No equality issues are highlighted in this report.

Relationship to Corporate Plan: This report does have a relationship to the realisation of key corporate objectives, the corporate plan and governmental targets set in relation to the performance of Local Planning Authorities (LPA's)

Impact on Climate Change: No climate change issues are highlighted in this report although the work of our planning teams does contribute towards measures aimed at reducing the negative impacts of climate change.

1.0 Context

- 1.1 Before going in to detail within this report, it seemed appropriate to provide some wider narrative concerning the planning profession 'at-large' at this time given the relevance to the topics covered within this report.
- 1.2 The first thing to mention is that demand for skilled planning professionals remains high, whilst 'supply' or 'availability' of planners remains very challenging. The reasons for this are not wholly clear, but a combination of factors is considered to be contributing to the current labour shortages. These include; the continued loss of older, skilled professionals from within the sector through retirement; the relative attractiveness of the private sector relative to the public sector (owing to increased geographical flexibility and higher pay); the complex and challenging environment in which Planners work – with an ever-changing policy/legislative arena, and; a reduced number of 'new entrants' to the profession.
- 1.3 Issues around attraction and retention of planning professionals are not unique to Mid Devon – and the issue is being experienced throughout the wider county, region and country as a whole and within other professions also. Within the 'Place' Directorate as a whole we have in recent months run recruitment exercises where we have not received a single application – despite roles being well advertised in the appropriate trade journals, being interesting and engaging roles and being advertised at salaries which are akin to neighbouring authorities of comparable size and nature.
- 1.4 It should also be noted that Mid Devon continually strives to be a good employer and roles are advertised as quickly as possible in order to avoid reliance upon agency contractors or fixed term employees. The employment of contractors, fixed term employees or consultants is therefore typically only undertaken where it is either the only option available, or where it is the most favourable option for the Council. Given the specialist nature of much of the work undertaken through our Planning department, the utilisation of consultants and contractors is often the most appropriate and efficient way for the Council to complete specific tasks. Some of these matters will be further discussed within this report.

2.0 Masterplans and Neighbourhood plans.

- 2.1 Masterplans are documents which typically seek to set the strategic context for development and set out indicative plans for development – sometimes guiding more site-specific and technical work which will follow and which will provide detailed plans. They sit beneath adopted Local Plans in terms of the planning policy hierarchy – hence such plans in Mid Devon seek to follow the principles set out within our adopted Local Plan.
- 2.2 Masterplans are sometimes standalone documents without planning weight (more often where the authority owns the land concerned) or may be developed to be Supplementary Planning Documents (SPD's) where the Authority does not own land, but wants to use Masterplan documents to guide

the development which will follow. Mid Devon has successfully developed several Masterplans over the years and is currently developing the Culm Garden Village masterplan.

- 2.3 A 'good' masterplan should always facilitate flexibility and accommodate change (where appropriate) – reflecting the considerable time over which development can occur, and allowing plans to change (within reason) as circumstances develop.
- 2.4 Neighbourhood Plans are plans promoted by a community where that community wants to have a greater say in the form of development. Neighbourhood plans were enabled through the Neighbourhood Planning Regulations (2012) and, since that time, numerous Neighbourhood Plans have been developed and adopted throughout the UK. In Mid Devon, 6 Neighbourhood Areas have been designated and the Cullompton Neighbourhood Plan was the first Neighbourhood plan to be adopted. Plans for Tiverton and Crediton will soon each be subject to local referendum, and three other plans are at different stages of development. As Planning Authority, Mid Devon has had involvement in these – but these have not formally been driven by Mid Devon, the initiative instead being taken by the relevant 'neighbourhood' with technical input and support from MDDC officers.
- 2.5 Owing to the differing nature of these plans (Masterplans and Neighbourhood Plans), the level and type of resource used to develop them varies significantly.
- 2.6 With Masterplans; it is often necessary to secure external specialist input and consultancy input in to the development of plans, even where MDDC officers 'project manage' the production and completion of the masterplan. This is because masterplans require a range of skills which might typically include landscape planning, architectural design, highways input, viability testing (financial modelling) and other specialist skills (around heritage/ecology etc.)
- 2.7 As a result of the complexity of these plans, it would be impractical and financially inefficient to seek to have all of these skills 'in house' and, owing to the relative speciality of these roles, MDDC (and other authorities) would not have the volume of such work to ensure that such professionals were always employed on such work and retaining/developing their skills through continuous work within their professional field. It is therefore normal, and practical, to seek to secure specialist masterplanning skills from consultancy firms to support in the development of masterplans when such skills are needed.
- 2.8 With neighbourhood planning; the deployment of Officers within this area of work is focused predominantly upon supporting the policy and legal processes which need to be followed in order to ensure plans are properly developed and 'made' through the appropriate procedures and processes. The utilisation of third parties in this work by MDDC is therefore negligible – and officers deploy their efforts in supporting those groups seeking to develop and adopt neighbourhood plans. The demands upon MDDC officers in such work has

been considerable in recent times, especially at crucial stages including overseeing the procedural arrangements for independent examinations and subsequent referenda. Our Forward Planning team has performed admirably in supporting recent Neighbourhood plan initiatives.

3.0 Technical work within the emerging Local Plan

- 3.1 Our new Local Plan, Plan Mid Devon, is being led and managed by our in-house Forward Planning Team. This team is highly capable and is similar in size to teams in other rural authorities employed to lead Planning Policy. The team has core skills which are key to enabling the progression and delivery of high-quality and robust Local Plans – however it does not contain officers with all of the technical specialisms required to deliver a Local Plan. For example; it does not contain highways engineers, flood experts, ecologists, retail specialists or a plethora of other ‘experts’. This is not unusual.
- 3.2 It does not contain such specialists as, as is the case with the masterplanning work discussed above, it would be impractical (unaffordable) for the Authority to employ the full-suite of technical experts required to support the development of the Local Plan and these experts would not seek to work within the team as their specialist skills could not be deployed all of the time – such specialist work typically only ever being a small part of the overall Local Plan document.
- 3.3 It is therefore appropriate that we (MDDC) seek to procure and utilise specialist consultants at the point in time they are required – and for the length of time required. It is also appropriate that we seek to secure specialised input from other Authorities where they have the skills which we can buy a part of. For example;
 - 3.3.1 Ecology advice for the new Local Plan – whilst MDDC require specialist input to support the development of Plan Mid-Devon, the advice is required at specific stages and for limited amounts of time. Rather than employ a full time Ecologist, MDDC therefore has an agreement with Devon County Council (DCC) to utilise their Ecology Officers (normally deployed throughout the whole county) to support us in completing specific tasks. This is efficient as it utilises DCC’s staff at competitive rates, allows us to complete the work to a high professional standard for lower costs and means that we (DCC and MDDC) can both benefit from the work – both organisations benefitting from the work completed. We (MDDC) utilises such specialists to support our work wherever possible. A Service Level Agreement (SLA) is currently in place with DCC for 2022-23 to buy in Ecology support for Forward Planning and also Development Management at a cost of £15,000. This SLA will be reviewed annually.
 - 3.3.2 Retail, Leisure and Tourism work to support the new Local Plan – a key, but fairly small, element of the new Local Plan will involve a review of current and anticipated future trends within the retail, leisure and tourism sectors. In order for this work to be robust and to stand up to scrutiny and challenge from

interested parties, the work will need to be well-informed with relevant evidence, be reflective and accommodating of current trends and market activity and follow understood and accepted processes and procedures in analysing key data – such as consumer/catchment demand, retail supply by sector/type and competing/proposed schemes. As with other specialist workstreams; the most efficient way to undertake and complete work to a high standard is to seek to procure it from specialist advisors who are highly active in such work. The cost of this consultancy work is forecast to be in the region of up to £30,000, subject to the scope of work needed.

4.0 Viability assessments

- 4.1 Viability assessments are a tool within planning to test, challenge and validate financial assertions made in relation to planning applications. For example; an applicant may assert that their development is unable to make financial contributions towards identified projects (affordable housing, for example) owing to financial pressures which exist on development sites. Financial pressures can, for example, include matters such as low sales values, high development (construction) costs or abnormal site conditions.
- 4.2 In these situations, the Local Planning Authority can choose to undertake a viability assessment, through an appropriately qualified professional (Chartered Surveyor), to test and challenge any assertions or assumptions made by an applicant. If required or necessary, the Surveyor can advise the LPA where applicant assertions are deemed to be inaccurate and unfounded, and the LPA can seek to reach agreement with the applicant regarding a revised viability position, potentially increasing contributions which are deemed to be proportionate and reasonable to compensate for the impact of development/support the provision of local services.
- 4.3 It should be noted that Viability in planning is far from a perfect science and, as with all financial modelling, can be heavily affected by minor variations in input data around cost and value etc. However, the LPA is bound to follow set guidelines relation to viability and Surveyors are bound to adhere to their own professional guidance in how they go about valuing land/property and advising their clients. Officers will always seek to ensure that the LPA receives the appropriate contributions from new developments within the district.
- 4.4 At Mid Devon, we employ Viability consultants to undertake this specialist work on our behalf rather than retaining the services of a specialist in-house. Again, we chose to do this owing to the specialist nature of the work and the fact that we could not deploy the skills of a viability expert in-house all of the time. Where a viability assessment is required to support an application we would typically seek to ensure the applicant pays for this (as the ultimate beneficiary of the work) and would look to secure 3 quotes for the work from prospective suppliers – ensuring that we are securing the best provider for the work at the most competitive rate. A viability assessment would typically cost in the region of £2,000 - £3,000. However this can increase depending on

whether further work is required, as in some circumstances, further interrogation of the applicants assumed costs and expenses is required.

- 4.5 As with other work, it would be difficult for us to employ a viability specialist in-house owing to the specialist nature of the work and the limited work-load which this employee would have to deploy their specialist skills. There is also a need for such specialists to be 'in the field' – working with a range of clients – to ensure that they remain current and up to date with market data (costs/values etc.) and understand development trends etc. Our approach is therefore felt to be appropriate and proportionate.
- 4.6 The new Local Plan will also need to be tested through a viability appraisal and this specialist work will be outsourced to a suitable consultant and cost is expected to be up to £50,000.

5.0 Appeals and Expert opinion

- 5.1 Appeals and Expert opinion (“especially for Planning Committee and Development Control decisions”) have been grouped as one item owing to their similarity.
- 5.2 Generally speaking, ‘expert opinion’ is sought either where further detailed/specialist advice needs to be sought for the LPA/Council to confirm its interpretation or understanding of a position in relation to technical guidance, policy, legislation or case law. Expert opinion would not be sought for run-of-the-mill items where officers would rely upon their own knowledge, that of their colleagues or experience/advice from professional peers or professional bodies. Expert opinion is therefore only typically sought where expertise does not exist in-house, where securing advice is deemed to ‘add-value’ for the Council and/or where clarity is required in order to properly discharge the duties and obligations of the Council/LPA.
- 5.3 An obvious situation where expert opinion is sometimes sought is in relation to Planning Appeals, normally where the Council is seeking to defend a refusal of a planning application by the LPA. Even in these circumstances, expert opinion may only be sought if the Authority is subject to an Inquiry or Hearing. This is done in order to ensure the Council is able to mount the best possible defence in relation to a case and where it is felt that external professional support is required to minimise the risk of a decision being overturned and, potentially, the LPA/Council incurring a cost award against it as a result. In these circumstances, expert opinion, although sometimes costly, can mitigate the risk of significant cost awards against the Council – thereby providing value for money.
- 5.4 The cost of ‘expert opinion’ will vary significantly according to the subject of the advice, the complexity of the case and the scale of the matter involved. However, as with all other commissions, the Council/LPA will always seek to secure the best advice possible at the most competitive price available in the circumstances that exist.

6.0 Staffing for vacancy cover

- 6.1 As set out earlier within this report; the employment of agency staff or staff via fixed term appointments are not typically the preferred route of employment for the Council – but these are sometimes routes of necessity to ensure the Council/LPA can discharge its obligations and/or remain legally compliant in fulfilling its obligations. Given the challenges which are currently being experienced throughout the south-west/public sector, the LPA is currently utilising agency staff to support the day to day running of services to ensure we can continue to meet our obligations. Although this is not a favoured approach, it is therefore necessary. As and when the Council/LPA is able to recruit appropriately skilled and qualified permanent staff in to permanent roles, we will seek to do so.
- 6.2 For fixed term contracts; these are typically used where funding is time-limited to deliver a time-bound project and the Council cannot therefore be certain of long-term funding to support the recruitment of permanent staff.
- 6.3. It is also worth noting that the Council acknowledges the need to ‘grow our own’ in light of the current (and projected) shortages of skilled staff. This will involve further consideration of opportunities to develop new staff through apprenticeship schemes. Although this will not deliver a ‘silver bullet’ in the short term in terms of giving the authority additional trained staff, it will mean that we will be better equipped for the future with staff which we have developed to ensure we can provide robust services in to the future.

7.0 Processes for Procurement and funding of select work

- 7.1 Procurement of all types of advice/external consultants will always be progressed in line with the Council’s procurement regulations and recorded accordingly. Typically, this would involve the Council securing at least three written quotes from reputable firms and evaluating accordingly, unless the fee is likely to exceed the public procurement tender threshold, in which case different tender processes would be utilised. It is unlikely that any of the types of work outlined above would exceed this threshold amount (currently set at £213,477).
- 7.2 In certain circumstances it will be possible for officers to identify specific procurement pathways which can yield time and cost savings to the Council. For example; this can involve the use of pre-procured framework contracts which the Council can benefit from, allowing the Council access to high-quality consultants at discounted rates relative to those typically offered by firms through individual contract arrangements/commissions.
- 7.3 It should also be noted that, wherever possible, the Council always seeks to secure grant funding to support the delivery of projects and MDDC has been especially successful in the regard in recent times, having secured grant-funding to progress key projects including the Culm Garden Village (including work focused on Junction 28), Cullompton railway station and Cullompton

Heritage Action Zone (HAZ). Deployment of such funding reduces the financial burden upon the Council to progress key work streams, but the time-bound nature of this funding often requires the Council to move quickly in commissioning work and delivering expenditure/work within set timeframes.

8.0 Conclusion

- 8.1 MDDC always seeks to secure value for money in its utilisation of planning consultants and external contractors. In many areas of work, the utilisation of contractors or consultants is the most appropriate and practical way of undertaking work in a timely and effective manner in order to ensure the Authority has high-quality work to support it in realising its objectives.
- 8.2 On some occasions it is necessary to seek to utilise contractors/agency staff – but this is not the preference of the Authority and is only undertaken where permanent staff cannot be secured, where particular skill sets are needed for specific projects on a time-limited basis or where it is financially advantageous to the Authority to utilise contractors.
- 8.3 Procurement rules are adhered to and officers always seek to secure the best quality support for the most competitive price, ensuring value for money for the public purse.

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Circulation of the Report: Leadership team, Cabinet Member (Cllr R. Chesterton)