

4th September 2014

Agenda Item:4

REPORT OF SERVICE DIRECTOR, HIGHWAYS

THE ROLE OF THE COUNTY COUNCIL AS A HIGHWAY AUTHORITY AND LOCAL LEAD FLOOD AUTHORITY IN THE PLANNING PROCESS

Purpose of the Report

1. To outline and clarify to Members the County Council's role in its capacity as the Local Highway Authority in the planning process.
2. To outline and clarify to Members the County Council's role in its capacity as the Local Lead Flood Authority in the planning process.

Information and Advice

Role of the Local Highways Authority in the planning process

Highway Management

3. The Highways Agency is the highway authority for the strategic road network (trunk roads e.g. A46, A453, and motorways).
4. The County Council is the local highway authority (LHA) for the County (i.e. excluding Nottingham City).

The Planning Process

5. District councils are local planning authorities (LPAs) and are responsible for determining most planning applications for housing and employment sites.
6. The County Council is the LPA for minerals and waste applications and also for its own applications, e.g. schools and libraries.
7. LPAs manage and administer the planning process and make decisions. As part of the process the LPAs consult with any parties that may be directly affected by proposals as well as with a number of statutory consultees including the LHA. It is then for the LPA to make the decisions on applications, weighing up all other responses from consultees together with national guidance and their own policies.

8. The County Council can only comment as a consultee on the planning applications being considered by LPAs. It may comment either as the County Planning Authority (CPA) or as the LHA, or in both capacities; however, the role of the County Council as CPA is not covered in this report. Regardless of which capacity it is acting in the County Council normally has 21 days in which to respond to the LPA on formal applications.
9. As the LHA the County Council can only comment on the highway aspects of any proposed applications and it must do this in relation and with strict regard to the national guidance produced by the Department for Transport, Department for Communities and Local Government and the Department for Environment, Food and Rural Affairs. In particular the recently revised National Planning Policy Framework makes it clear in point 32 that 'Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.' There is no definition of what 'severe' means.
10. In view of the above applicants apart from showing that their proposals are safe only have to demonstrate that their proposed developments and any mitigating measures on the highway network that they may include do not have a 'severe' impact on the highway network. In doing this they do not have to take account of any other proposed developments in the vicinity that may possibly happen in the future unless those developments already have planning permission.
11. Whilst the LHA will vigorously investigate and interrogate the highway aspects of any application it is severely restricted on what recommendations it may make to the LPA on highway matters. It cannot object to an application on its belief that a development may be unsafe, may adversely affect other road users or residents or that Members may not wish to see the development progress unless it can be demonstrated that the relevant national guidelines are not being met. Any objections the LHA may make to an application have to be legally defensible when measured against the national guidance and should no objections be made subject to certain conditions being satisfied those conditions have to be reasonable and within the relevant national guidance.
12. If the LHA is found to have acted unreasonably by a Planning Inspector, should an aggrieved applicant appeal against a refusal, costs can be awarded against the LHA. These costs can be considerable including legal fees as well as compensation for any losses.
13. Fortunately the quality and robustness of the highway comments made by the County Council to the LPAs have been such that the Authority has never been in a position where costs have been awarded against it by a Planning Inspector for a refusal by an LPA based upon highway grounds. However, to give an illustration of the level of costs that an authority may face, one LPA in the County has in recent times had to pay £250,000 to a developer following a ruling in favour of the applicant by an Inspector. The LPA involved had to pay the costs from within its existing budgets.

Role of the Local Lead Flood Authority in the planning process

Flood Risk Management

14. The Flood and Water Management Act (2010) assigns powers and duties to the County Council as Local a Lead Flood Authority (LLFA) for managing local flood risk. Local flood risk includes flooding from ordinary watercourses, surface water and groundwater. The Environment Agency (EA) is responsible for flooding from main rivers. The Act covers a broad range of complex matters and involves a wide variety of bodies and organisations and its full introduction is therefore being phased in over a number of years.

The Planning Process

15. Unlike its role as the LHA the County Council as the LLFA is not currently a statutory consultee within the planning process. Current proposals by Government indicate that LLFAs will take on some of this role (currently carried out by the EA) but given the flood issues in the south-west of the Country earlier this year and concerns about the diminishing role of the EA the transfer of this function has been delayed with no official commencement date having been announced.
16. In the meantime the EA continues in its role as a statutory consultee and provides comments to the LPAs on the flooding aspects for all planning applications. In light of the fact that the County Council is likely to take on part of this activity it is worth outlining the role that the EA currently takes as this is the same as the LLFA will be carrying out in the future.
17. In many instances the EA will have no comment to make as the proposal may only be a small extension to a domestic property with no impact on flood risk or the site may not be in a location considered to be at risk of flooding. If the proposed development is in an area that has been identified by the EA as being at risk of flooding or in an area with critical drainage problems or in excess of 1 hectare in size or changes the use of land or buildings in such a way that flood vulnerability is increased then the developer must complete a Flood Risk Assessment (FRA). The FRA allows developers to identify the measures that they propose to take as part of their development works so that they meet with the obligation of not increasing the risk of flooding to their site or the locality.
18. The EA analyse the content of the FRA and the comments that it then makes to the LPA must only reflect the technical robustness or not of it and the measures proposed within it and the appropriateness of these in relation to the flood risk within the locality.
19. The EA cannot object to an application on its belief that a development may contribute to an increase in the risk of flooding unless it can technically prove this and it cannot object on the grounds that the development does not decrease the risk of flooding in the locality. The same situation will apply once the LLFA takes on this role and Members will wish to note that the ability for the County Council to object to a development on flood risk grounds will be restricted to technical matters only. Any objections to applications that may be made have to be legally defensible and should an applicant refer a planning refusal on the grounds of flood risk to a Planning Inspector and they find in the applicants favour costs could be awarded against the LLFA. These costs can be considerable including legal fees as well as compensation for any losses.

Sustainable Urban Drainage

20. The Flood and Water Management Act (2010) also contains legislation in respect of Sustainable Urban Drainage Systems (SUDS). These drainage systems are designed to hold surface water that drains from an area and then slowly release it into the ground so that flood risk to a development and the locality is minimised during heavy rainfall.
21. Whilst the original intention by Government was to have implemented Schedule 3 of the Act which would introduce a statutory duty for developers to incorporate SUDS into their developments and for the LLFA to be the approval body for these in April 2014 it has been delayed. It is unlikely to be implemented before April 2015 although it is expected that the government will make a statement this summer/early autumn which will set out in greater detail both the date and details of the plans for implementation.
22. The role of the County Council as the SUDS Approval Body (SAB) will require it to technically approve all proposed SUDS. Without this approval developers will not be allowed to commence work on their developments. In determining if the proposed SUDS is suitable for the development proposed and the locality that it is located in the SAB will need to refer to national guidance although at present this is yet to be finalised. Any objection to a developers proposed SUDS can only be based on the technical aspects of the proposals and will have to prove that national standards are not being met. The legislation contains the right of appeal for developers although at present the details of this have not been finalised. However it is likely that it will have a similar format and provision to that for decisions made by the LPA.

Other Options Considered

23. None. This report is for information purposes.

Reason/s for Recommendation/s

24. The role of the County Council as a statutory consultee on highway matters and as a likely statutory consultee on flood risk matters should be considered as an important aspect of the County Council's role in the overall planning process. However it is one which is and will be limited mainly to commenting on the technical aspects of planning applications. It is for the LPA in making a final determination on a planning application to take note of these comments along with any others they receive together with the requirements of national guidance and their own policies. The LPA are under no obligation to act on the advice or objections of the County Council if they feel that there are other more relevant factors that have precedence in the final decision that they make.

Statutory and Policy Implications

25. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

That the contents of this report be noted.

Andrew Warrington
Service Director (Highways)

For any enquiries about this report please contact:
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Constitutional Comments [SLB 01/08/14]

26. This report is for noting only.

Financial Comments [TR 04/08/14]

27. None.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All