



12th March 2019

Agenda Item: 7

REPORT OF CORPORATE DIRECTOR – PLACE

PROPOSED AMENDMENTS TO THE COUNTY COUNCIL'S CODE OF BEST PRACTICE RELATING TO THE REFERRAL OF PLANNING APPLICATIONS TO PLANNING AND LICENSING COMMITTEE

Purpose of Report

1. To seek Members' approval of a minor amendment to the existing Code of Best Practice to take on board financial implications for the County Council in connection with Planning Performance Agreements, and secondly to seek Members' approval to undertake a wider review of the scheme setting out which applications must be reported to Planning and Licensing Committee for determination.

Background information

2. The Planning and Licensing Committee Code of Best Practice sets out how the County Council deals with those matters which come within the remit of the Planning and Licensing Committee, the role of the Committee, how the Committee operates and the respective responsibilities of councillors and officers. Section 2A.2 of the Code confirms that committee delegates authority to officers to determine planning applications submitted to the authority, apart from those which meet any of the following criteria, which was last updated and approved in July 2017:
 - (a) Applications involving a site area greater than 25 hectares or extraction/input in excess of 30,000 tonnes per annum or new development with a floor space in excess of 10,000 square metres;
 - (b) Applications involving a departure from the Development Plan and which meet the criteria for applications being referred to the Secretary of State before granting planning permission, plus development in a Flood Risk Area to which the County Council, as Lead Local Flood Authority, has made an objection. Departure applications which do not meet the criteria for referral to the Secretary of State will only be determined under delegated powers with the prior agreement of the Local Member;
 - (c) Applications accompanied by an Environmental Impact Assessment;

- (d) Applications which have S106 agreements/Planning obligations and those which have other financial implications for the County Council;
- (e) Applications which have received valid planning objections, in writing, from the District/Borough or Parish Council or local Member within the statutory consultation period or within an extended period as agreed by the County Council;
- (f) Applications which have been referred to Committee by a local Member;
- (g) Applications which are recommended for refusal unless the refusal is on the grounds of insufficient information;
- (h) Applications which have received significant* objections, within the statutory consultation period or other such period as agreed with the County Council, from consultees or neighbouring occupiers (* for clarification, 'significant' objections requiring referral must i) raise material planning considerations, ii) be irresolvable by amendment to the scheme or imposition of planning
- (i) Applications which are submitted by Place Department (or any subsequent Department following any future restructuring where the applicant is in the same Department as the Development Management Team) where these are the subject of any objections;
- (j) Applications which raise issues of regional or national importance or relate to proposals involving emerging technologies;
- (k) Applications involving the determination of new conditions for mineral sites and those involving the making and serving of orders for revocation, etc where compensation is likely to become payable;
- (l) Applications for variations (Section 73 applications) to planning permissions which involve the variation or removal of a condition which Members of Planning and Licensing Committee requested be brought back to committee for determination.

Planning Performance Agreements

3. The introduction of a Planning Performance Agreement (PPA) Charter was approved by Communities and Place Committee on the 10th January 2019 and this was then formally adopted as Council policy by Policy Committee on 23rd January 2019. A copy of the Charter is set out as an appendix to this report. PPAs are project management tools which local authorities and applicants can use to agree timeframes, actions and resources for handling planning applications. They are voluntary agreements between the Council and the applicant which offer a range of enhanced planning services alongside the normal planning application process, including; pre-application meetings, enhanced community involvement and application progress meetings and specialist technical input where appropriate. The PPA will have a cost attached, to be borne by the applicant, but

this will have no implications for whether the application is granted planning permission. The key benefits of PPAs include;

- Identification of key issues and relevant consultees at an early stage;
 - Setting more realistic and predictable timetables, with a structure of deadlines and action points;
 - Improved collaborative working between the various parties;
 - Identification of key issues and relevant consultees at an early stage;
 - Better overall management of advice at pre-application and post application stages;
 - Greater accountability, transparency and communication;
 - Better project management with a guarantee of dedicated Council resources;
 - Removal of statutory timescales for the application;
 - Greater commitment from relevant consultees to respond in a timely manner, particularly internal consultees;
 - Better commitment to community engagement and consultation;
 - Ability to recover costs, thereby reducing the financial burden on Council resources.
4. In addition to the approval of the PPA Charter itself, members of Policy Committee agreed a further recommendation that;
- “A report be taken to Planning and Licensing Committee recommending approval of an amendment to Section 2A.2 (d) to that Committee’s Code of Best Practice to read as follows (amendment shown below in ***bold italics***):
- “Applications which have S106 agreements/Planning obligations ***or a Planning Performance Agreement*** and those which have other financial implications for the County Council”.
5. This amendment is considered to be in the spirit of transparency and impartiality of the County Council and provides reassurance that the existence of a PPA has no bearing on the ultimate outcome of the application.

Wider review of the Code of Best Practice

6. The current list, setting out which applications must be reported to Planning and Licensing Committee for a decision, was last updated and approved in July 2017. As agreed at the time officers have continued to monitor the scheme and several issues have arisen, including the matters set out below.
7. **Variations (Section 73 applications)** – between July 2017 and December 2018 there have been a total of 41 planning applications reported to Planning and Licensing Committee for a decision. Of these more than 50% were for applications to vary conditions, many of which have been for relatively minor changes to the extant permission. However, because they relate to development on a site greater than 25 hectares and/or where the mineral extraction or waste

input rates are over and above the current threshold of 30,000 tonnes per annum, the existing Code of Best Practice required them to be referred to Committee for a decision. Members are therefore asked to consider the following potential options to ensure that only the most significant and controversial Section 73 applications are brought to Committee for a decision:

- Increase the mineral extraction/ waste input;
- Remove the criteria altogether; or
- Leave the scheme unchanged.

8. Members should note that if the criteria were to be removed altogether (as suggested in one of the options above) those applications which continue to generate objections in line with other criteria in the scheme would be reported to committee for determination, irrespective of the level of extraction/input. However, more significant applications which do not generate sufficient levels of objections would only be approved by officers following consultation with the chair and vice-chair and the local Member with the issue of planning permission being accompanied by an agreed level of publicity and details being reported to committee at the next available meeting.

9. **New development with a floorspace of 10,000sqm** – This threshold is set at such a high level that it has not resulted in any applications being referred to Committee for a decision because it met this criterion. This threshold was originally chosen to be consistent with thresholds set out in the Environmental Impact Assessment Regulations. It is worth noting however that some significant developments have been approved under delegated powers, where the floorspace is significantly less than 10,000sqm and they have not triggered any of the other criteria, such as number of objections. One example of this would be the new school on the former Rolls Royce site in Hucknall, which had a proposed floorspace of 1,345sqm, which was approved under powers delegated to officers. Members are therefore asked to consider the following options to capture appropriate applications which have significant floorspace, these could include the following:

- Reduce the threshold from 10,000sqm to 1,000 sqm;
- Remove the criteria; or
- Leave the scheme unchanged.

10. Again, if this criterion was to be removed or remained the same, any significant proposals would only be approved by officers under delegated powers following discussions with chair/vice chair/local member, as detailed in paragraph 8 above.

11. **Applications which are recommended for refusal unless the refusal is on the grounds of insufficient information** – this criterion was introduced to allow for a quick turnaround of applications where insufficient information has been

submitted, despite repeated requests, to enable the Council to meet its targets for determination. However, it was intended that this would be irrespective of the other criteria in the list. Officers would like extra clarity for this category and suggest that it be inserted into the list that irrespective of all the other criteria such applications can be refused under delegated powers on the grounds of insufficient information.

12. There may be other minor changes to the scheme which it would be appropriate to make, and a wider review of the current list within the Code of Best Practice setting out which applications must be referred to Committee for a decision is proposed. These suggested changes will then be brought back to a future Planning and Licensing Committee for consideration. Any Member feedback on the existing criteria, as detailed in paragraph 2 above, would be appreciated as part of this exercise.
13. Members should be aware that it is essential to strike a balance between the transparency of decisions being made at Committee, particularly for those applications where the County Council is also the applicant or those subject to significant local objections, and the recognition that determining applications under delegated powers usually results in decisions being made in a more timely manner.

Statutory and Policy Implications

14. This report has been compiled after consideration of implications in respect of finance, the public-sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment, and those using the service and where such implications are material they are described below.

Human Rights Implications

15. Relevant issues arising out of consideration of the Human Rights Act have been assessed. Rights under Article 8 (Right to Respect for Private and Family Life), Article 1 of the First Protocol (Protection of Property) and Article 6 (Right to a Fair Trial) are those to be considered. In this case, however, there are no impacts of any substance on individuals and therefore no interference with rights safeguarded under these articles.

RECOMMENDATIONS

16. It is recommended that:

- 1) Members approve the amendment to Section 2A.2 (d) of the Code of Best Practice to read as follows (amendment shown in **bold**):

Applications which have S106 agreements/Planning obligations **or a Planning Performance Agreement** and those which have other financial implications for the County Council.

- 2) Members request that officers undertake a wider review of the list of applications which must be referred to Planning and Licensing Committee for a decision, incorporating any Member recommendations from this meeting, and bring a recommended list back to Committee for consideration.

ADRIAN SMITH

Corporate Director – Place

Constitutional Comments [RHC 13/02/2019]

Planning and Licensing Committee is the appropriate body to consider the contents of this report by virtue of its terms of reference.

Financial Comments [RWK 13/02/2019]

There are no specific financial implications arising directly from the report.

Background Papers Available for Inspection

None

Electoral Divisions and Members Affected

All

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For any enquiries about this report, please contact the report author.