



REPORT OF THE CHAIRMAN OF PLANNING AND LICENSING COMMITTEE

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

Purpose of Report

1. To seek Members' approval of amendments to the existing Planning and Licensing Committee Code of Best Practice, setting out which planning 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 criteria set out below. 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. Members will recall that at Policy Committee in January this year the introduction of a Planning Performance Agreement Charter was approved as Council policy and Members resolved to add Planning Performance Agreements to criterion d) below.

Current Code of Best Practice

- 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/or a Planning Performance Agreement 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 conditions, iii) involve **four or more** objections from separate properties);
- 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.

Wider review of the Code of Best Practice

- 3. Following the Policy Committee decision, Members of Planning and Licensing Committee subsequently (in March 2019) approved the inclusion of this amendment to the Code of Best Practice and also approved a recommendation that officers should undertake a wider review of the list of application types which must be referred to Planning and Licensing Committee for a decision.
- 4. Between July 2017 (the date of the last review) and March 2019 there have been a total of 44 planning applications reported to Planning and Licensing Committee for determination. 38 (86%) of these were for minerals and waste applications and 6 (14%) for Regulation 3 (County Council) development. During the same time period, July 2017 to March 2019, there have been 90 delegated decisions issued.
- 5. As part of the review officers identified a range of issues and recommended a number of changes to the criteria, these are set out below.

Key issues and changes to the criteria for referral to Committee

- 6. **Variations (Section 73 applications) relating to 25-hectare sites** – 57% of the total applications reported to Committee related to Section 73 applications to vary conditions attached to existing planning permissions. Many of these Committee decisions have been for relatively minor changes to the extant permission, such as changes to the restoration plans or changing hours of operation. However, because the proposals related to development on a site greater than 25 hectares in size or with a rate of extraction or input of more than 30,000 tonnes per annum, the existing Code of Best Practice required the applications to be referred to Committee for determination, irrespective of whether the applications generated any objections from the local Member, consultees or members of the public. Members are therefore asked to

consider the proposal of removing the 25-hectare threshold for sites which are the subject of variation applications and only applying this threshold to new minerals and waste sites.

7. **Variations relating to 30,000tpa (tonnes per annum)** – The suggested new criterion (b) will require only those variation applications which involve increasing the rate of extraction/input by more than 30,000tpa on existing minerals and waste sites to be reported to Committee. The existing wording requires all variations on sites with existing extraction/input rate of 30,000tpa to be reported to Committee irrespective of the changes proposed.
8. These two changes will ensure that only the most significant and controversial variation applications are brought to Committee for a decision. All other criteria would apply to these proposals, such as objections or Chair/Vice Chair or local member referral. It is estimated that around 8 applications (since the last review in July 2017) would not have been reported to Committee if this had been in place.
9. **New built development** – The current threshold for new built development for both minerals and waste applications and Regulation 3 proposals is 10,000 sqm of floorspace. This is set at such a high level that it has not resulted in any application being referred to Committee for a decision because it met this criterion. Officers consider that a more realistic threshold would be proposals with a floorspace more than 1,000 sqm. Had this criterion been in place two significant County Council proposals would have been brought to Committee for determination. These were the new school on the former Rolls Royce site in Hucknall and the Orchard School and Day Centre in Newark, both which had a proposed floorspace over 1,000sqm. These did not trigger any of the other criteria so were determined under delegated powers. Reducing the threshold of new built development to 1,000sqm will provide the opportunity for Members to be involved in the decision-making process on significant developments and major investments in the County such as these.
10. **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 make a decision and to enable the Council to meet its targets for determining application within statutory timeframes or an agreed time extension. However, it was intended that this would be irrespective of the other criteria in the list which needed to be made clearer.
11. **Other minor changes**
 - **Financial implications** – it is proposed to consolidate all criteria relating to financial implications.
 - **Local members** – all references to local member within the list be amended to local members to reflect divisions where there is more than one member.
 - **Significant objections** – the criterion relating to significant objections is reworded for clarity, “non-statutory” consultees added and confirmation that any withdrawn objections must be confirmed in writing.
 - **District/Borough or Parish Council or local Member representation** – the word “valid” is amended to “material” planning objections to be consistent with other criterion.
 - **Referrals by the Chair/Vice Chair of Planning and Licensing Committee** – a new criterion added to allow such referrals of applications that would otherwise be determined under delegated powers.

12. Based upon the issues above a revised list was reported to Planning and Licensing Committee on 4th June 2019 where these changes were agreed subject to one minor amendment. The endorsed scheme is set out below and is now brought to Policy Committee for approval. The Appendix to this report provides a summary of the existing and proposed criteria and the reasons for the changes.

Approved criteria for referral to Planning and Licensing Committee

13. If approved by this Committee and adopted as Council policy the following types of planning applications will, in future, be reported to Planning and Licensing Committee for a decision:
- a) Applications for new minerals or waste sites involving a site area greater than 25 hectares or extraction/input in excess of 30,000 tonnes per annum.
 - b) Section 73 variations on existing minerals or waste sites which involve increasing the rate of extraction/input by more than 30,000 tonnes per annum.
 - c) New built development with a floor space in excess of 1,000 square metres.
 - d) 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. 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(s).
 - e) Applications to which a *statutory consultee has made an objection. [*as defined by the Town and County Planning (Development Management Procedure) (England) Order 2015 and any subsequent amendments].
 - f) Applications accompanied by an Environmental Impact Assessment.
 - g) Applications which have financial implications for the County Council such as:
 - Section 106 agreements/obligations/restoration bonds;
 - Review of minerals permissions (ROMPs) and revocation orders where compensation is likely to be payable;
 - Applications subject to a Planning Performance Agreement.
 - h) Applications which have received material planning objections, in writing, from the District/Borough or Parish Council or local County Councillor(s) within the statutory consultation period or within an extended period as agreed by the County Council.
 - i) Applications which have been referred to Committee by the Chair and/or Vice Chair of Planning and Licensing Committee and/or by the local County Councillor(s).
 - j) Applications which have received 4 or more material planning objections within the statutory consultation/publicity period (or other such period as agreed with the County Council) from non-statutory consultees or members of the public which remain unresolved following amendments to the scheme or through the imposition of planning conditions and where the objections have not been withdrawn in writing.
 - k) 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 material planning objections.

- l) Applications which raise issues of regional or national importance or relate to proposals involving emerging technologies.
- m) 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.
- n) Irrespective of whether any of the criteria above are met, any application which is recommended for refusal unless the refusal is on the grounds of insufficient information.

Monitoring of the Code of Best Practice

14. Members should be mindful of the need 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 timelier manner. It is not anticipated that the proposed changes to the criteria will make a significant difference to the overall number of applications being reported to committee and therefore it is unlikely that there will be any impact on the workload of officers or Members. The current level of delegated decisions is likely to remain at around 70%, with 30% being reported to Committee for a decision. However, in line with the previous reviews, officers will continue to monitor the scheme and report back annually on how the scheme is working and provide advice to Members should any further amendments be considered appropriate.

Statutory and Policy Implications

15. 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

16. 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

It is recommended that:

1. Members approve the amendments to the criteria for referral of planning applications to Planning and Licensing Committee as set out in paragraph 13 above and approve an update to Section 2A.2 of the Planning and Licensing Committee Code of Best Practice to reflect these changes.

Councillor Chris Barnfather
Chairman of Planning and Licensing Committee

For any enquiries about this report please contact:
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Constitutional Comments (RHC 24/06/19)

17. Policy Committee is the appropriate body to consider the contents of this report by virtue of its terms of reference.

Financial Comments (RWK 13/06/19)

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

Background Papers Available for Inspection

- None

Electoral Divisions and Members Affected

- All

Appendix - Summary of existing and proposed wording of criteria and reasons for the changes

Existing criteria	New criteria	Reason for change/no change
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 10,000sqm	This criterion has been amended and split to include Section 73 applications (variations) but to distinguish between new sites and variations in term of the site area and throughput. The proposed new criteria and the reasons for them are detailed separately below.	
	a. Applications for new minerals or waste sites involving a site area greater than 25 hectares or extraction/input in excess of 30,000 tonnes per annum;	a. The proposed wording ensures that the 25 hectares criterion only relates to new sites and not to proposals to vary conditions attached to existing planning permissions.
	b. Section 73 variations on existing minerals or waste sites which involve increasing the rate of extraction/input by more than 30,000 tonnes per annum;	b. The proposed wording confirms that any variation application which seeks to increase the amount of mineral extraction or waste input by 30,000 tonnes per annum will automatically be referred to committee.
	c. New built development with a floor space in excess of 1,000 square metres	c. Reduce new built floorspace from 10,000sqm to 1,000 sqm to ensure schemes of significant floorspace are brought to members for a decision. 10,000sqm considered to be set too high and has resulted in no applications being brought to Committee on that basis.

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	d. 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. 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(s)	Separate this criterion into two separate criteria for clarity and Local Member changed to plural to reflect divisions represented by more than one Member.
As above	e. Applications to which a *statutory consultee has made an objection [*as defined by the Town and County Planning (Development Management Procedure) (England) Order 2015 and any subsequent amendments]	Now a separate criterion and category broadened to include objections from all statutory consultees not just those from the Lead Local Flood Authority. Definition of statutory consultee added for clarity.
Applications accompanied by an Environmental Impact Assessment	f. Applications accompanied by an Environmental Impact Assessment	Criteria to remain the same to enable Committee consideration of large-scale mineral, waste and County Council development and those in sensitive locations.
Applications which have S106 agreements/ Planning obligations or a Planning Performance Agreement and those which	g. Applications which have financial implications for the County Council such as;	Criteria to be amended so Members are made aware of any financial implications for the County Council relating to proposals where restoration bonds are sought.

have other financial implications for the County Council	<ul style="list-style-type: none"> • Section 106 agreements/ obligations/ restoration bonds, • Review of minerals permissions (ROMPs) and revocation orders where compensation is likely to be payable, • Applications subject to a Planning Performance Agreement. 	Financial implications relating to ROMPS included within this criterion in place of previous separate criterion.
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	h. Applications which have received material planning objections, in writing, from the District/Borough or Parish Council or local County Councillor(s) within the statutory consultation period or within an extended period as agreed by the County Council.	<p>“Valid” changed to “material” planning objections to be consistent with wording used in criterion (j).</p> <p>Local Member changed to plural to reflect divisions represented by more than one Member.</p>
Applications which have been referred to committee by a local member	i. Applications which have been referred to Committee by the Chair and/or the Vice Chair of Planning and Licensing Committee and/or the local County Councillor(s).	Chair and Vice Chair referrals added at the request of the Chair/ Vice Chair of Planning and Licensing Committee. Local Member changed to plural to reflect divisions represented by more than one Member.
Applications which have received significant* objections, within the statutory consultation period or other such period as agreed with the County Planning Authority, from consultees or neighbouring occupiers (* for clarification, 'significant' objections requiring referral must i) raise material planning consideration, ii) be irresolvable	j. Applications which have received 4 or more material planning objections within the statutory consultation/publicity period (or other such period as agreed with the County Council) from non-statutory consultees or members of the public which remain unresolved following amendments to the scheme or through	<p>Wording of condition rearranged for clarity.</p> <p>Clarity also provided by stating that objections need to be withdrawn in writing, otherwise they remain as valid objections.</p>

by amendment to the scheme or imposition of planning conditions, iii) involve four or more objections from separate properties)	the imposition of planning conditions and where the objections have not been withdrawn in writing.	
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	k. 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 material planning objections.	The word “material” added for consistency with other criteria.
Applications which raise issues of regional or national importance or relate to proposals involving emerging technologies	l. Applications which raise issues of regional or national importance or relate to proposals involving emerging technologies.	No change.
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	No separate criterion	Delete criterion and include within financial implication category above.
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	m. 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	No change

	brought back to committee for determination	
Applications which are recommended for refusal unless the refusal is on the grounds of insufficient information	n. Irrespective of whether any of the above criteria apply, any application which is recommended for refusal, unless the refusal is on the grounds of insufficient information.	<p>Clarity provided so that even if the proposals meet other criteria, if there is insufficient information provided (despite repeated requests) they can be refused on those grounds alone.</p> <p>All other recommended refusals will be reported to Committee for a decision. Members' endorsement of the decision to refuse an application is considered to be beneficial if the decision is subsequently subject to an appeal.</p>