



REPORT OF CORPORATE DIRECTOR – PLACE

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. Members will recall that at Planning and Licensing Committee in March this year it was 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. At the Planning and Licensing Committee meeting in March Members also approved a recommendation that officers undertake a wider review of the list of applications which must be referred to Planning and Licensing Committee for a decision and bring a recommended list back to a Committee for approval following this review.
4. With the exception of the minor adjustment to incorporate Planning Performance Agreements, 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 this report recommends further changes to the existing scheme based on officers' observations of the nature and scale of applications which have and have not been reported to Committee during this time. The proposed changes also aim to reflect the views of Members expressed at the Planning and Licensing Committee in March.

5. 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. 25 of the total applications reported to Committee related to Section 73 applications to vary conditions attached to existing planning permissions. This equates to 57% of all Committee decisions. All but one related to minerals and waste sites. The details of the applications reported to Planning and Licensing Committee are set out in Appendix 1 of this report.
6. During the same time period, July 2017 to March 2019, there have been 90 delegated decisions issued. Details of these applications are as follows: 33 full Regulation 3 applications, 30 full minerals and waste applications, 12 variations (all but one relating to minerals and waste sites), 12 temporary permissions (mainly temporary classrooms) and 3 prior notifications (for demolition works). The overall split for delegated decisions was 49 (54.5%) Regulation 3 applications and 41 (45.5%) minerals and waste applications.

Key issues and suggested changes to the criteria for referral to Committee

7. **Variations (Section 73 applications)** – As stated above more than 50% of decisions made by Committee related to applications to vary conditions, some of which 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.
8. **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.
9. These changes will ensure that only the most significant and controversial Section 73 applications are brought to Committee for a decision. All other criteria would apply to these proposals, such as objections or local member referral. It is

estimated that around 8 applications would not have been reported to Committee if this had been in place.

10. **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. This threshold was originally chosen to be consistent with thresholds set out in the Environmental Impact Assessment Regulations. 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. However, any such change may add to the time needed to determine a planning application which will need to be factored by the applicant into the project programme.

11. The proposed changes to the existing criteria (a) are summarised in the table below.

Existing criteria	New criteria
(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 10,000sqm	(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.

12. **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 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. Officers would like extra clarity for this category and it is recommended that it be inserted into the list that, irrespective of whether any of the other criteria apply, such applications can be refused under delegated powers on the grounds of insufficient information.

13. **Other minor changes to the criteria:**

- Financial implications – it is proposed to consolidate all criteria relating to financial implications and therefore it is recommended that Review of Minerals Permissions (ROMPS) and revocation orders, where compensation is likely to be payable, are included alongside the other financial criteria in place of a separate category. Applications which have proposed restoration bonds would also be reported to Committee for determination.
- 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.

14. A full list of existing and proposed criteria and the reasons for the changes is set out in Appendix 2 to this report.

15. Based upon the issues above the recommended scheme is set out below.

Proposed criteria for referral to Planning and Licensing Committee

16. In light of the above considerations, officers recommend that the Code of Best Practice is amended so that the following planning applications will 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 Member(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 Member(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 are irresolvable by amendment to the scheme or through the imposition of planning conditions (and the withdrawal of the objection is confirmed 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

17. 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 there 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

18. 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

19. 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

20. It is recommended that:
- 1) Members endorse the amendments to the criteria for referral of planning applications to Planning and Licensing Committee as set out in paragraph 16 above and update Section 2A.2 of the Planning and Licensing Committee Code of Best Practice to reflect this change.
 - 2) If Members of this Committee endorse the changes set out in this report it is recommended that these be referred to Policy Committee for adoption as a Council policy.

ADRIAN SMITH

Corporate Director – Place

Constitutional Comments [SG 09/05/2019]

21. I confirm that the recommendation falls within the remit of the Planning and Licensing Committee by virtue of its terms of reference.

Financial Comments [RWK 08/05/2019]

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

Background Papers Available for Inspection

None

Electoral Divisions and Members Affected

All

Report Author
Jane Marsden-Dale
0115 9932576

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