

THE NEW REQUIREMENT TO DEMONSTRATE AND EXPLAIN HOW THE LOCAL PLANNING AUTHORITY HAS WORKED IN A POSITIVE AND PROACTIVE MANNER IN DEALING WITH AN APPLICATION.

Purpose of the Report

To advise Members of a new requirement regarding decision notices for approval or refusal of planning permission and to draw to Members' attention the possible consequences of such a requirement.

RECOMMENDATIONS

- (a) That in making a decision which is broadly in line with the recommendation Members agree the content of the Statement.**
- (b) That Members draw to the case officer's attention any concerns that they have with an application coming to the Committee for determination as early as possible having received notice of the application in the weekly list - so that potential solutions to the concerns are sought with the applicant in line with the requirements of the National Planning Policy Framework (NPPF).**
- (c) That full advantage is taken of the use of conditions in planning permissions to make developments acceptable**
- (d) When a resolution is moved at Committee to refuse an application contrary to recommendation that Officer advice should be sought as to the most appropriate way to meet the requirement that decision taking is done in a positive and proactive way.**
- (e) That your Officer in consultation with the Chairman and Vice Chairman keeps under review how existing Committee procedures including the guillotine on late representations, submissions and public speaking are affecting the Council's ability to work in a positive and proactive manner to achieve sustainable development, and if they consider it necessary a separate report be brought before the Committee for consideration.**

As of 1 December 2012, a new requirement has come into effect (under the Town & Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2012. Decision notices for approval or refusal of planning permission now have to include a statement explaining "*how, in dealing with the application, the local planning authority have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application*"

The requirement does not apply to decision notices on applications for listed building consent, conservation area consent, advertisement consent and certificates of lawfulness.

The requirement refers to problems arising in relation to *dealing with a planning application*. As Members will be aware the NPPF also strongly encourages pre-application engagement and front loading.

The Government in promoting this legislative change has indicated that it reflects the new approach to planning and presumption in favour of sustainable development as set out in the NPPF.

The statement on a particular application will obviously depend on the particular case, but the purpose of this new requirement is so it can be demonstrated that the Local Planning Authority have been positive and proactive in-line with the requirements of paragraphs 186-187 of the NPPF, which state as follows:-

"186. Local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. The relationship between decision-taking and plan-making should be seamless, translating plans into high quality development on the ground.

187. Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area."

The key members will note is to ensure the delivery of sustainable development.

The Government indicates that the requirement (to provide such a Statement) will give greater confidence in the approach taken by Local Planning Authorities. The requirement applies to all planning decisions made by the Council – whether under delegated powers by officers or by the Planning Committee. It is clear that the Government is seeking a ‘cultural’ change within Local Planning Authorities and they see this new requirement as one of a number of means of achieving this. The content of these Statements may be referred to in subsequent applications for an award of costs against an Authority (in appeal proceedings)

It will therefore be necessary to ensure that during the course of the consideration of any application that ‘such positive and proactive engagement’ has taken place with an applicant or their representative. This could involve:-

- seeking amendments early on in the application process where there are concerns about elements of application – to see if a positive ‘sustainable’ solution can be agreed,
- ensuring that applicants are made fully aware early on when there are issues of principle that make the development unacceptable such as where development is unsustainable or there is some other clear policy conflict, and
- where there are a number of concerns and opportunities to overcome some but not all of them, discussing these with the applicant, again early on in the application process

It is the intention to include such a statement within reports on all planning applications that are reported to Planning Committee and Members will note that such a statement is included within the reports on this agenda. In reaching a decision broadly in line with the recommendation set out in the report Members will be agreeing that the Statement within the report is correct and appropriate unless the Committee make it clear, when reaching a decision, as to how the Statement should be worded differently.

Difficulties may arise, however, where Members seek to refuse an application contrary to a recommendation of approval as this is unlikely to reflect the nature of the engagement that has taken place between officers and the applicant during the application process. When this situation arises it will be necessary for the Officer attending Committee to advise Members as to whether it could be stated that the Local Planning Authority has worked in a positive and proactive manner with the applicant if the decision is made at that meeting or whether it will be necessary to defer the decision. Deferral of decisions may well be the appropriate course of action in some cases but it will inevitably affect performance which, in the context of other government proposals on the designation of poorly performing authorities is very important. Members are therefore strongly encouraged to discuss with the case officers in good time before the relevant Committee meeting any concerns they have about a proposal, particularly where these concerns are ones that could potentially be addressed, so that the case officer can consider approaching the applicant prior to the meeting to seek solutions to these concerns, if appropriate. Provided Members do not indicate that they are of a “closed mind” with respect to the proposal, the issue of predetermination of the application should not arise.

It is appreciated that Members may be uncertain as to when an item is due to come before the Committee. Officers are normally able to give a good estimate of this – but in any case the emphasis in the NPPF is clearly on early engagement with an applicant rather than one undertaken ‘at the last minute’ under the pressure of the Committee’s guillotine on late submissions. The guillotine on late representations clearly assists in avoiding matters being brought up at the ‘last minute’, but it has to be recognised that public speaking at Committee does bring with it that risk, whilst having other benefits. Your Officer continues to consider that the guillotines the Council operates are ultimately helpful to all parties, but clearly that which refers to late submissions does limit the time within which an applicant can respond, and if Members are unable to give sufficient notice of issues which they may raise, the Committee may need to review its procedures at a later date.

Members may wish to note that the receipt of all applications for Major Development is reported to the Strategic Planning Consultative Group, which provides an opportunity for that Group to perform an important role assisting in the early identification of issues, and that full details of all applications are available to view on the Council’s website from the date when the application becomes valid.