

# Swindon Borough Council

## Planning Department

### Protocol for Dealing with Planning and Related Applications

Approved by the Planning Committee on 11th June 2019

#### 1. Introduction

This protocol was considered and approved by the Planning Committee at its meeting on 11<sup>th</sup> June 2019

#### 2. The legal position

2.1 The requirements for publicising planning applications are set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Planning Authority is required to publicise a planning or related application once it has been validated.

2.2 In accord with legislation in most cases, a 21 day period is given in which responses must be made. The application details are published online and are accessed via the planning pages of the council's web site. Once the consultation period has ended, the web site reflects this, and comments are no longer able to be submitted on-line. Where the consultation period includes bank holidays the 21 day period is extended to reflect the number of days so affected

2.3 There are also statutory publicity requirements for certain categories of development, which include the posting of site notices and publishing details in the public notices section of a newspaper, for example, proposals affecting a listed building and conservation area and major development.

#### 3. Use of IT / electronic media

3.1 The Government continues to encourage local planning authorities to make use of electronic media and the legislation reflects this by allowing consultation to take place in this format. The department takes advantage of IT and normally notifies statutory and internal consultees by email. Similarly Parish and Town Councils are notified in this way.

3.2 Applicants are encouraged to submit their applications and documents / drawings electronically via the Planning Portal rather than in paper format.

3.3 When an application is made electronically the planning authority may correspond with the applicant in this manner.

- 3.4 The Public Access System where the application details are viewed through the Council's web pages.
4. Consultation with neighbours
- 4.1 In addition to the relevant statutory consultees that the local planning authority are obliged to consult, adjoining properties are required to be consulted and given an opportunity to comment on planning applications. Swindon Borough Council carries out this requirement by notifying the neighbouring properties, i.e. those premises that adjoin the application site. This is done by writing to the properties concerned, informing them of the proposal and providing information as to where the details about the application can be inspected and the date by which any comments must be made. All post is sent out via 2<sup>nd</sup> class mail except in exceptional circumstances where first class mail may be used. Currently the notification is in the form of a pre-printed card but it is hoped to move to a letter format, using 'docmail'. This will be more cost effective and provide more flexibility for bespoke text.
- 4.2 The application details are published online and are accessed via the planning pages of the Council's web site. A period of 21 days is given in which responses must be made. When the consultation period has ended, the web site reflects this, and comments are no longer able to be submitted on-line.
5. General Consultation Principles
- 5.1 Notifications are sent to neighbouring occupiers whose properties adjoin an application site, whether or not they are residential neighbours.
- 5.2 In the case of a side extension to a house, those properties situated either side and to the front and rear will be notified. In the case of a rear house extension, only those to the side and rear will be notified. Similar principles will apply to a front only extension. Some developments that may have wider / off site impacts may be subject to broader consultation, including the use of site notices.
6. Consultation following receipt of revised details / amended plans
- 6.1 A proportion of the applications dealt with are subject to revisions. It is generally regarded as good practice by most planning authorities, including this Council to undertake further consultation in cases where the impact of the revision is deemed to justify re-consultation. Where so deemed appropriate, notification will be either in writing, as with the original consultation, or if the representation has been made electronically, and the respondent has not 'withdrawn' electronic communication, the notification may be made that way. However, a lesser timescale of 14 days is allowed for responses.
- 6.2 In each case a judgment has to be made whether further consultation is necessary and if so whether it should be a 'wholesale' exercise or be proportionate to the nature and impact of the revisions. The following are examples where revisions would not normally lead to a further round of consultation being carried out:

- The revisions mitigate, address or overcome objections.
  - The revisions reduce the scale or impact of a scheme to which no comments have been received.
  - The revisions amend part of a scheme where no additional impact arises and upon which no concerns have been raised.
- 6.3 When it is deemed appropriate that a revised consultation exercise takes place, the notifications will be limited to:
- Those properties that are adjacent to the location of the amended proposals.
  - Those properties directly affected by the location of the amended proposals.
  - Those who have written in already and expressed concerns at the matters being amended – unless their stated concerns have been addressed

## 7. Consultation with Swindon Borough Councillors

- 7.1 Members are made aware of applications through the weekly list of applications that appears in the Members bulletin, published each week and either emailed or posted to every Councillor. Where members request the weekly list as a stand-alone document, separate to the Bulletin, it is either emailed or posted to them as they may prefer upon request.
- 7.2 Ward Councillors are only notified where re-consultation takes place following amendments to an application. This is because the amendments would not appear in the weekly list, which only report applications received and determined. As with other consultees, a period of 14 days is given to respond.
- 7.3 From time to time, Councillors are formally notified of new applications ,. Although there is no legislative requirement to do this, notification does occur where the case officer is of the view that that a proposal may be locally controversial or is a type of development that Ward Members have expressed an interest in and therefore special attention should be drawn to it. Such notification will normally be via electronic media.
- 7.4 It is not currently possible to configure the IT system to automatically generate an email to Borough Councillors when an application in their Ward is received and validated, However, members can register with Public Access to receive email notifications using filters such as Wards, Parishes, type of applications, dates etc. The notifications are generated daily.
- 7.5 In accord with the Councils Constitution, Borough Councillors are able to request that applications are brought before the planning committee for determination. Such requests must be made in writing, within 21 days of validation (14 days for revised plans) and provide reasons for the 'call in'

## 8. Consultation with Parish and Town Councils

- 8.1 The process of notifying Parish and Town Councils follows closely that for notifying neighbours, described above. . They are notified of applications within their area and are given 21 days to comment and 14 days when notified of revised plans.
- 8.2 The procedure is also contained in the Swindon Borough Parish and Town Council Charter 2015, agreed by the Parish and Town Councils, and the Swindon Area Committee of the Wiltshire Association of Local Councils in January 2015.
- 8.3 The Charter also confirms the ability of Parish and Town councils to request that applications be determined by the planning committee rather than by officers under delegated powers. This echoes the Councils scheme of delegation but does require reasons to be given for the request as to why a particular application is considered to raise significant planning issues or is locally controversial. If such reasons are not provided, the 'call in' request may be declined.
- 8.4 Parish and Town Councils are consulted using electronic media.
9. Consultation on applications for the approval of Reserved matters following grant of Outline permission
- 9.1 For applications that follow the grant of outline permission, in addition to statutory consultees we will notify only those immediately affected by the details of the reserved matters., rather than those further afield who whilst not agreeing with a development, will not be directly affected by the details e.g. layout and building details.
- 9.2 Similar principles regarding notification of revised details or further reserved matters submissions are applied as those to applications for full planning permission (described above) where the principle of the development has been established by the grant of planning permission and a revised application proposes changes to the scheme, e.g. changes to a housing development to alter the layout / house types.
10. Larger sites

The neighbour notification procedure described above requires all those properties adjoining the application site to be notified of the proposal. There will be instances where it is reasonable and appropriate for this be re-assessed and a more proportionate approach taken. For example there might be a proposal for a cycle shelter within a large commercial complex or a school campus, where the application site might include the whole grounds. To avoid unnecessarily consulting a number of neighbours who may be a significant distance away and will not be affected by the proposal a judgment will be made to ensure a proportionate consultation exercise is undertaken so that only those properties likely to be affected will be notified. Of course, a site visit might suggest otherwise and additional or wider notification may be carried out.

## 11. Certificates of Lawfulness

There is no formal requirement for a local planning authority to undertake any consultation upon receipt of this type of application. This is because they must be considered on the basis of fact rather than on the planning merit, acceptability or desirability of the development. In clear cut cases, no neighbour consultation would be expected to be undertaken. However, there may be instances where the local planning authority may find it helpful to seek additional evidence from neighbours or others. In such cases there is nothing to preclude the local planning authority from seeking the views of local residents or any other interested parties to assist its deliberations.

## 12. Telecommunications

Applications for planning permission or prior approval for Masts and paraphernalia associated with telecommunications including those by mobile phone and broadband operators can be controversial. Acknowledging this, all properties, including schools, within a 100m Radius of the site are to be notified when applications are received.

## 13. Reporting comments received.

13.1 All comments / representations received are assessed and taken into account in the determination of applications. These are set out by the officer in the application report and commented upon / addressed as appropriate in reaching the recommendation / decision.

13.2 Where an application is determined by the planning committee, those making representations will be informed of the meeting details to enable them to speak or be present at the meeting of the planning committee.

13.3 There are often instances where objectors / supporters of a scheme produce a standard letter / email that is copied by many individuals and submitted in opposition or support of a development. Each letter is logged as an individual comment and each person will be notified of the decision and if applicable the date the planning committee meeting at which the application that the application will be considered at.

## 14. Petitions

The local planning authority will continue to treat petitions that relate to a planning application as a single representation. When received, the petition will be logged as a comment from a single individual and this will be attributed to the author of any accompanying note or in the absence of any details identifying the originator of the petition, it will be attributed to the top signature on the first or top page. This protocol is confirmed and explained in the planning pages of the Council's website

## 15. Determining applications

Applications are determined either by the planning committee or by Officers authorised under the Council's Scheme of Delegation. This is re-affirmed by Council each year as part of the constitution; the details of which are:

An application will be determined under delegated powers unless

- a) The Head of Planning, Regulatory Services and Heritage determined that it should be determined by the planning committee;
- b) A member has requested in writing within 21 days of the date of validation that the application be considered by the planning committee;
- c) A parish Council request within 21 days of notification the planning committee considers the application because it raised significant planning issues or is locally controversial.

## 16. Late representations

*Applications dealt with by the Planning Committee*

- 16.1 Representations received after the publication the agenda and up to the start of the meeting will not normally be circulated. The committee will be informed that additional representations have been received but the detail will only be reported where they raise new points or significantly add to those reported in the committee papers. If the comments are received very late, members may be advised that there has been insufficient time to assess or consider the information.
- 16.2 With regard to request for material to be circulated at the meeting, the Members Planning Code of Good Practice advocates against allowing documents to be circulated at Committee meetings which have not previously been submitted to the Committee as all parties may not have had time to react to the submissions and officers may not be able to provide considered advice on the material. The courts have indicated-- R (Joicey) v. Northumberland County Council [2015] - that they are likely to quash a decision where new materials have not been made available to the public at least five clear days before the relevant meeting, in breach of section 100D of the Local Government Act 1972. The objectors were said to have not had adequate time to prepare and respond in that particular case.

*Applications dealt with under Officers' Delegated Authority*

- 16.3 Representations received after the close of the formal consultation period will be considered, provided that the case officer is aware of them before the relevant application report has been written. Representations received after this time will be taken into account by the Officer determining the application provided that he/she is aware of their existence prior to the application being decided. Decided in this case means that the decision has been authorised (signed off)

## 17. Non Material and Minor Material amendments

- 17.1 Recent changes introduced flexibility into the planning regime to allow applicants to amend their schemes in a less onerous way than by making a planning application. The options available include applications for a non-material

amendment and a minor material amendment, each of which has a different procedure.

- 17.2 The approach to use will depend on the particular circumstances of each. Similarly, the appropriateness of the extent of any consultation will have to be considered on a case by case basis.

18. Site visits by the Planning Committee

Individual members of the committee can, prior to a meeting, visit the site under their own volition with or without the appropriate Planning Officer if they consider it necessary.

19. Conditions on planning permissions

Most planning permissions are subject to conditions which are discharged by Planning Officers under Delegated Authority. Occasionally, there will be exceptional circumstances where members may wish to be made aware of such details and may for example request that Officers discharge a condition in conjunction and the agreement the Ward Councillors. Similarly the discharge of some conditions may require that technical or specialist input is sought.

20. Appeals

When an appeal is received, in addition to Ward Councillors and Parish Councils, all those previously notified of and commented on the related application are informed that an appeal has been lodged. Any comments they wish to make must be sent direct to the planning inspectorate (details will be given on the notification letter) who administer the process. The exception is in respect of 'householder' appeals where there is no further opportunity to comment. Any Member, local council or individual who wishes to be notified of the appeal decision, must notify the Planning Inspectorate of their request.

21. Permitted Development / Prior approvals

- 21.1 Informal requests for a decision on whether a proposal constitutes permitted development are no longer accepted. Such requests can be made via an application for a certificate of lawfulness. However, as members will be aware the scope of permitted development rights have recently been extended and relaxed.

- 21.2 The relaxation has in many instances introduced a formal but limited consultation requirement, default approval where no representations have been made and also sets out the limited extent of matters that can be taken into account. For example, where larger 6m and 8m long house extensions are proposed, only the immediate neighbours are notified and if they do not object within 21 days, permission is deemed to have been granted. Members and Parish Councils are unable to have any part in this process and are therefore not notified. These types of application cannot normally be 'called in'. The local planning authority is required to determine such applications so as to comply with and be in accord with the relevant regulations.

22. Local Development Orders

A number of Local Development Orders (LDOs) have been made by the Council, including those covering, development at employment locations, low carbon energy. Each LDO specifies the consultation that will be necessary. This is less than what is required for formal applications because a wider consultation exercise would have been undertaken prior to the making of the LDO.

23. Other Matters

From time to time the department is contacted by persons who have requested (insisted) that they be formally notified of an application of which they have knowledge of by being sent a card. They are of course already aware of the application, which is the rationale for notifying, but have not been formally consulted. This is most likely because they live a little further away from a site than would trigger a notification. In such cases it is not appropriate to agree to their request as they clearly know about the development and are not prejudiced or precluded from commenting. This would extend the consultation period for a further 21 days which may not be desirable or reasonable. Criticism could also be levelled at the Council for not informing others in a similar position. Such interested persons will be advised to comment on the application as this would trigger and ensure further notifications about the application will be sent to them as it progresses.

24. Notification of the decision

Those that have made representations in respect of an application are not subsequently informed of the outcome of the determination of the application. This is because they would have been informed via the 'consultation card' that the details of the outcome would be available on the planning pages of the Council's website.

25. Privacy statement / How personal information will be used

- 25.1 The Planning department receives a significant amount of correspondence on applications, much of which is required to be made available and published so that it can be viewed on-line. There is a requirement to ensure that sensitive information is not made available electronically, including personal contact details phone nos, email addresses and signatures. Such details are redacted. Agents or other persons acting on behalf of applicants are not deemed to be private individuals and their details will remain in the public domain.
- 25.2 The names and addresses of those persons making comments will remain in the public domain as this will enable officers and members and applicants assess and consider the impacts of a development upon their properties
- 25.3 A privacy statement is published and available on the council's website to assist and ensure that those persons who make comments will know what will happen to the information they provide.



## Recording documents on Public Access

26 There have been instances where representations have been incorrectly described. For example some comments or matters aired have been listed as an 'objection, when perhaps they should be more properly described as neutral. Occasionally this has caused issues between parties, therefore all representations from interested persons / neighbours will be recorded as a 'public comment'.

26.1 It is acknowledged that some applications contain a large number of drawings and revisions and also may attract hundreds of representations, however there is the ability to sort the documents by date and by name / type

### 27. Pre application consultation

27.1 The Council encourages all applicants, developers and landowners to discuss their proposals with Borough Councillors (Ward Members) and the local community including Parish and Town Councils before submitting planning applications. However, the legislation as currently drafted does not make this mandatory. There may be instances where a developer wishes to carry out pre – application discussions about a potential scheme with the local planning authority that they do not want to be made public, even when these discussions include selected Statutory Consultatons. The local planning authority will only comply with such a confidentiality request, in so far as its duty under the Freedom of Information Act and the Environmental Information Regulations permits. The developer will be urged to share details of the proposed scheme with the community at the earliest opportunity.

### 28 Conclusion

Whilst this protocol will cover most situations and applications, there will always be the occasional proposal that will require special treatment or wider consultation. In such cases the local planning authority will continue to adopt a cautious approach of undertaking more, rather than less consultation.