

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: THURSDAY, 10 OCTOBER 2013
 title: GROWTH AND INFRASTRUCTURE ACT 2013
 PLANNING FEES AMENDMENT 2013
 submitted by: DIRECTOR OF COMMUNITY SERVICES
 principal author: DANIELA RIPA, SENIOR PLANNING OFFICER

1 PURPOSE

1.1 To inform members of two recent changes to planning legislation, which will have implications for the development management service from 1 October 2013. These legislative changes form part of the Government's wider planning reform agenda, the aim of which is to simplify and speed-up planning procedures.

1.2 Members are requested to refer to the Growth and Infrastructure Act 2013 and the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (Amendment) Regulations 2013.

1.2 Relevance to the Council's ambitions and priorities

- Community Objectives - } Matters identified raise issues associated with
 - Corporate Priorities - } community involvement as well as being a well-
 - Other Considerations - } managed Council providing an effective and
- efficient planning service.

2 BACKGROUND

2.1 Members will recall a report to the Planning and Development Committee on 18 July 2013 regarding changes to permitted development rights that came into force on 30 May 2013. Certain changes of use are now permitted development, subject to a prior approval process. The 2013 fees amendment introduces an £80 fee for applications for prior approval under this process.

2.2 The remainder of the legislative changes introduce significant reform to planning procedures. In March 2011, the Government announced its intention to introduce a 'Planning Guarantee' - that applications should take no more than a year to decide, including any planning appeal. Planning applications should therefore spend no more than 26 weeks with either the local planning authority or, in the case of appeals, the Planning Inspectorate. The legislative changes form two of the Government's mechanisms to deliver the Planning Guarantee and improve planning performance.

2.3 Firstly, the 2013 fees amendment will enable applicants of applications for planning permission and reserved matters applications to request a refund of the application fee if it remains undetermined after 26 weeks.

- 2.4 Secondly, the government will assess planning performance in relation to major applications - both the speed of decisions and the quality of these decisions. The Government intends to 'designate' poorly performing local planning authorities if they fail to meet either of the following targets:
- Speed - 30% or fewer major applications determined within the statutory period or within an agreed extended period
 - Quality – 20% or more of major decisions overturned on appeal.
- 2.5 Performance against these two criteria will be assessed over a two year period and the Government intends to make the first designations at the end of October 2013. In terms of speed, the assessment period would be the two years up to the end of the most recent quarter, in this case 30 June 2013. In terms of quality, the assessment period includes an additional nine months following the end of the assessment period to enable the majority of decisions on planning applications made during the assessment period to be followed through to subsequent appeals that may be lodged, and for the outcome of those appeals to be known. The assessment period is therefore the two years up to 31 December 2012.
- 2.6 Where a local planning authority is designated, applicants can chose to submit major planning applications directly to the Secretary of State, facilitated by the Growth and Infrastructure Act 2013. These applications would be determined by the Planning Inspectorate. The 2013 fees amendment also makes provision for the Planning Inspectorate to provide pre-application advice in these instances, charged on an hourly rate basis.
- 2.7 The Secretary of State will decide once each year whether any designations are to be lifted and whether any new designations are to be made. The performance targets may also be reviewed each year.
- 2.8 A designation will be revoked if the Secretary of State is satisfied that the designated local planning authority has provided adequate evidence of sufficient improvement against areas of weakness identified in an initial assessment of its performance (conducted shortly after the authority is designated) and provided that the designated local planning authority:
- Would not, at the time that decisions about de-designation are made, remain eligible for designation on the basis of the criteria used for that purpose;
 - Has completed any administrative tasks required of them – associated with applications made directly to the Secretary of State – on time in at least 80% of cases during the designation period;
 - Has not, in the view of the Secretary of State, caused unreasonable delays in signing any section 106 agreements associated with applications submitted directly to him during the designation period.

3 IMPLICATIONS

Prior approval applications

- 3.1 The £80 fee for prior approval applications in respect of permitted changes of use would not apply if a planning application is submitted at the same time for related development. For example, if prior approval is sought in respect of a proposed change of use from offices to apartments, with a planning application for external alterations to the building submitted at the same time, the £80 fee would not apply.
- 3.2 The £80 fee is unlikely to cover the cost of processing the prior approval application and in many cases, the Council will be processing these applications without a fee at a cost to the service. This places additional burden on officer time and resources. Although the fee refund does not apply to prior approval applications, it is imperative to note that these applications differ from planning applications. A decision on a prior approval application must be received by the applicant by day 56 or the development may proceed in accordance with the details submitted. Decisions on these applications cannot be extended beyond 56 days.

Designations

- 3.3 An applicant proposing major development within a designated authority's area would be able to bypass the local planning authority and submit both the pre-application advice request and the planning application directly to the Planning Inspectorate. There would be a loss of planning fee income for the designated authority, which would become a statutory consultee in the planning application process.
- 3.4 The designated authority would remain responsible for processing the major planning application, including recording the application on the planning register, notifying neighbours, putting up site notices, providing the planning history for the site, providing information on anticipated cumulative impacts and negotiating the s106 agreement. The designated authority would not receive a portion of the planning fee for undertaking these tasks. Anticipated cumulative impact may require the authority to commission consultant reports, for example in relation to retail impact assessment.
- 3.5 The Government considers this 'should be seen as part of the disincentive to poor performance which the wider policy represents'¹. This would place additional burden on time and resources as the designated authority would not be able to recoup the costs associated with processing these major applications and commissioning specialist cumulative impact assessments.
- 3.6 The Government's intention to designate annually places a renewed emphasis on improving performance against the current stated targets. The government can review the targets annually and could theoretically increase the performance targets next year, which would then be applied retrospectively over the previous two year period.
- 3.7 At present, planning performance will be assessed in relation to major applications only and decisions within an extended determination period can also be included in the targets. Penalties apply for failure to provide quarterly performance figures to DCLG and

1 Planning performance and the planning guarantee – government response to consultation (DCLG June 2013).

the quarterly returns include performance in respect of other applications. The government could in future widen the targets to include other applications.

Refund of application fees

- 3.8 There are financial implications associated with the requirement to refund the planning application fee where the application remains undetermined after 26 weeks. This would apply to all planning applications and reserved matters applications. As major applications attract larger fees, there would be considerable financial implications in respect of these applications.
- 3.9 Refunds would not apply in circumstances where an extended period of determination has been agreed in writing, providing the decision is made within the extended period. However, an applicant intending to appeal against non-determination is likely to be unwilling to extend the period of determination. Refusing major applications approaching the 26 week date would be a risk unless there are sound planning reasons for doing so, as performance in respect of designation is also measured on quality (20% or more of major decisions overturned on appeal).

4 ISSUES

- 4.1 Many major applications require a Section 106 Agreement, which often means that despite an application being resolved to approve within the time period, it subsequently goes over the deadline. In order to improve the situation, Section 106 agreements may need to be frontloaded in the planning application process. Post planning agreements to allow for an extension of time should also be used in relation to all applications approaching the target date. Members will be aware that when necessary, applications can be made invalid if they do not include a draft s106 agreement.
- 4.2 In relation to major planning appeals allowed – the failure to meet the target has in the past often been the result of appeals in which it has been decided to go against the officer recommendation and these have subsequently been allowed on appeal. For the assessment period the government intends to use in respect of quality, four major appeals were determined and all four were overturned on appeal. The Government however accepts that the overall appeal success rate would be too crude a measure and is thus proposing to look at all decisions on applications for major development and to relate this to the number of these decisions that are both refused and then lost at appeal. This allows the overall pattern of decisions on major applications to be taken into account, giving a measure which is proportionate.
- 4.3 In light of these legislative changes, it is important to review the planning application process and minimise potential delays. It is noted that:
- The pre-application process helps to resolve potential issues prior to the submission of an application and streamlines the application process, hence it is important to ensure that this service delivers what is expected.
 - In terms of the registration of applications, there is a need to ensure the application is with the case officer shortly after its receipt. A target of 3-5 days from validation to case officer needs to be met.

- Service level agreements potentially need to be reviewed to prevent delay in consultation responses being received.
- The application needs to be presented to and determined by committee as early as possible in the application process.
- Applications need to be closely monitored, particularly those awaiting s106 agreements.

5 RISK ASSESSMENT

5.1 This report may have the following implications:

- Resources – The reform will place additional pressure on resources. It is important to ensure that the service delivers what is expected as there could be significant financial implications.
- Technical, Environmental and Legal – Implications for s106 legal agreements and the timescales applicant's are given to complete these.
- Political – The potential for major applications to be determined by the Planning Inspectorate could have political implications.
- Reputation – To be designated as poorly performing would harm the Council's reputation.
- Equality & Diversity – No implications identified.

6 RECOMMENDED THAT COMMITTEE

6.1 Note the changes in legislation and the importance of delivering an effective and efficient planning service.

DANIELA RIPA
SENIOR PLANNING OFFICER

JOHN HEAP
DIRECTOR OF COMMUNITY SERVICES

For further information please ask for Daniela Ripa, extension 4502.