

Agenda Item: **8.1**

RE : RECOMMENDATIONS ON PLANNING APPLICATIONS INVOLVING LEGAL AGREEMENTS

1. SUMMARY

- 1.1 This report concerns procedures for the handling of planning applications that require an applicant to enter into a legal agreement prior to planning permission being granted.

2. RECOMMENDATIONS

- 2.1 Agree to the implementation of the proposed procedure.
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3. BACKGROUND

- 3.1 The meeting of the Government's and Council's own targets for the time taken to process planning applications is an important Council objective. It also affects the amount of Planning Delivery Grant the Council receives from Central Government. Past changes in internal processes have resulted in steady improvements in the time taken to deal with planning applications. But, it is important that the Department constantly reviews and amends its processes to promote the highest degree of efficiency compatible with the Council's overall public service objectives.
- 3.2 It is considered that the existing process by which Section 106 Legal Agreements and Planning Obligations in association with planning applications are completed could be significantly improved. Given the increased complexity of planning applications and the increasing number of applications that require a legal agreement, particularly following the recent adoption of the Croydon Replacement Unitary Development Plan and Planning Guidance Note No1 on Planning Obligations, it is now necessary to change the process by which agreements are conducted.

4. PRESENT ARRANGEMENTS

- 4.1 At present during the processing of an application when it is concluded that the applicant's need to enter into a legal agreement, to ensure that various obligations are met, they are advised of this at a relatively late stage. In addition, the Council's Legal Officers are not normally formally instructed to instigate discussions with the applicant's solicitors until the planning application has been assessed and planning officers are minded to recommend that permission be granted.

4.2 The above procedure is not efficient and this is compounded since applications that require legal agreements are currently presented for determination to either a Committee or a Delegated Business Meeting with formal recommendations that state:

‘Permission Granted, subject to the prior written conclusion of a Section 106 legal agreement within a period of 6 months from the date of this resolution, or such longer period as may be agreed in writing by the Head of Planning Control’.

4.3 This recommendation gives applicants up to six months to complete an agreement. This is a substantial period of time which in many instances results in the relevant planning permission not being issued within the statutory time period. In some circumstances, it is believed that following a favourable committee decision some applicants have delayed the completion of agreements in order to extend the life of the eventual planning permission. It is clearly the case that many do not expedite the completion of a legal agreement following a favourable committee resolution.

5. PROPOSED ARRANGEMENTS

5.1 To facilitate an improvement in the service, it is considered that the procedures described below be introduced.

5.2 On receipt of an application a basic assessment will be undertaken to ascertain whether a legal agreement would be required should it eventually be favourably recommended. If this is the case a letter will be sent to the applicant no later than 2 weeks from validation advising that:

- A legal agreement will be required
- The likely issues that will have to be addressed in it
- The agreement will need to be completed no later than 8 or 13 weeks from the date of validity of the application and that failure to complete within these time periods could result in a refusal of planning permission
- For their assistance a basic template of the legal agreement may be inspected on the Council’s website
- The letter is without prejudice and should not be taken as indicating that a favourable recommendation will be forthcoming
- Details of the their solicitors should be immediately forwarded

5.3 Concurrent to the above the Council’s Solicitors will be advised of the application. As the majority of legal agreements involve the provision of Affordable Housing and as this tends to comprise the most complex part of such agreements the Director of Housing will also be advised of the application at this stage.

5.4 During the processing of the application a timetable of liaison between the Planning case officer, Council’s solicitor and Housing case officer will be adhered to maximising the opportunity for achieving the completion of the legal agreement within the target period. All other internal and external consultations will be carried out in the normal manner.

- 5.5 It is anticipated that the above will allow for discussion and completion of an agreement either before the relevant Committee or Delegated Business Meeting or no later than the appropriate target date. Applications would then be passed forward for determination with one of the following recommendations:

Majors that require legal agreements and are to be determined within the 13 week period:

Grant planning permission subject to the completion of an appropriate legal agreement(s) prior to the expiry of 13 weeks from the date of validity of the application, unless a further period is agreed by the Head of Planning Control. If the agreement(s) is not completed within this time the application be refused on grounds of failing to provide the relevant obligations.

Minors and others that require agreements and are to be determined within the 8 week period:

Grant planning permission subject to the completion of an appropriate legal agreement(s) prior to the expiry of 8 weeks from the date of validity of the application, unless a further period is agreed by the Head of Planning Control. If the agreement(s) is not completed within this time the application be refused on grounds of failing to provide the relevant obligations.

- 5.6 It is inevitable that some applications will not be completed within the required time periods, such as very large complex schemes that involve Environmental Impact Assessments. In these cases the following recommendations would be used to specify a future date by which the agreement should be completed.

Majors that require legal agreements and are to be determined after the 13 week period has expired:

Grant planning permission subject to the completion of an appropriate legal agreement(s) within 8 weeks of this decision, unless a further period is agreed by the Head of Planning Control. If the agreement(s) is not completed within this time the application be refused on grounds of failing to provide the relevant obligations

Minor and others that require agreements and are to be determined after the 8 week period has expired:

Grant planning permission subject to the completion of an appropriate legal agreement(s) within 8 weeks of this decision, unless a further period is agreed by the Head of Planning Control. If the agreement(s) is not completed within this time the application be refused on grounds of failing to provide the relevant obligations.

- 5.7 There may be various circumstances that could warrant the Head of Planning Control exercising their ability to extend the time period for the completion of a

legal agreement. However, it is anticipated that this power would be used infrequently and principally where completion has been delayed through no fault of the applicant. Given that the completion of legal agreements and deadlines for the handling of planning applications are now an integral part of the planning process, delays caused by an applicant's inability to adhere to deadlines would not normally be a justification for allowing an extension of time.

6. ENVIRONMENTAL CONSIDERATIONS

- 6.1 The Legal Agreements attached to planning applications relate to a range of environmental considerations such as sustainable transport initiatives. The proposed changes should encourage the earlier completion of these planning obligations. There are no other environmental considerations arising from this report.

7. EQUALITIES CONSIDERATIONS

- 7.1 There are no equalities implications arising from this report.

8. LEGAL CONSIDERATIONS

- 8.1 The solicitor to the Council comments that the meeting of the Government and Council targets in the determination of planning applications also forms part of the Comprehensive Performance Criteria and therefore it is helpful for the Council's internal procedures to be improved where possible.
(Approved by Melissa Clarke Solicitor on behalf of the Council's Secretary and Solicitor)

9. HUMAN RIGHTS ISSUES

- 9.1 No relevant issues

10. FINANCIAL CONSIDERATIONS

- 10.1 There are no direct financial implications arising from this report as any cost of the proposed change in procedure will be accommodated within existing budgets. The proposed changes are designed to improve the Council's performance in determining planning applications, particularly in the Major Applications category which is vulnerable to fluctuations due to delays in completing legal agreements. As such the changes should help to ensure that not only are Government targets met but that awards of Planning Delivery Grant for performance on planning applications are maximised.

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