

**Meeting:** Planning and Development Committee

**Agenda Item:**

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## **Planning Applications – Dealing with Late Representations**

### **1. RECOMMENDATIONS**

- 1.1 That a policy of not reporting public representations on an application to be considered by the Planning and Development Committee if it is received after 5.00pm two business days before the relevant Committee Meeting (e.g., 5.00pm on Monday before a Thursday meeting).
- 1.2 That the Assistant Director of Planning and Regulation, in consultation with the Chair, be authorised to report representations received outside of the time period specified in 1.1 to the Committee in exceptional circumstances i.e., where new material planning issues are being raised.

### **2. SUPPORTING INFORMATION**

- 2.1 Members have expressed concerns about late public representations and have asked officers to look into the requirements to report late representations and to consider the scope for introducing a cut off time for considering them.
- 2.2 Members are referred to Section 3 in which the following matters are considered:
  - Why late representations are sometimes made
  - The problems they can cause
  - Statutory requirements.
- 2.3 These are dealt with in turn, together with the options and their respective advantages and disadvantages.

### **3. IMPLICATIONS**

#### **3.1 WHY REPRESENTATIONS ARE MADE LATE**

- 3.1.1 There are many and various reasons why representations are made after the statutory consultation period. Officers believe, however, that they are largely attributable to the following:
  - Late awareness of the application
  - Changes being made to the proposal
  - Intentional delay as tactic (to prevent counter comment or to obtain a deferral of the application)

- Desire to comment and challenge officers' recommendations in the Committee Report.

3.1.2 However, there are occasions that statutory consultees (e.g., drainage or highways) have been consulted on amended plans and / or technical documentation to address certain planning issues and were unable to provide comments prior to the publication of a Committee Report. Or: there have been occasions where third parties were unable to provide comments prior to publication of a committee report, for instance where plans or other documentation have been amended to address a particular planning issue and this forms part of their original representations to the Council as Local Planning Authority.

### **3.2 PROBLEM CAUSED BY LATE REPRESENTATIONS**

3.2.1 One of the principles of proper consultation is that not only should there be adequate time to make representations, but that there should be adequate time to consider them. It is difficult to see how this principle is served when detailed, complex and /or numerous representations are circulated at or immediately prior to the Committee meeting at which the application is being considered.

3.2.2 When this occurs, it often means Members either have to spend a disproportionate amount of time at and/ or prior to the Committee digesting the contents of these late representations or they have to defer consideration of the application to the next Committee meeting with all the attendant delay and additional administrative work that brings with it.

### **3.3 STATUTORY REQUIREMENTS**

3.3.1 Legislation (The Development Management Procedure Order) lays down time periods that the public must be allowed in which to make representations. This will vary depending on the type of application, but this must not be less than 21 days (18 days in the case of an application for public service infrastructure development made on or after 1 August 2021 or 14 days where a notice is published in a newspaper). Statutory consultees must, by law, respond to a formal consultation within 21 days

3.3.2 National Planning Practice Guidance (paragraph: 034 Reference ID: 15-034-20190723) sets out that local planning authorities may, at their discretion, take into account comments that are made after the close date (but have no obligation to do so).

3.3.3 Local planning authorities are expected to determine applications for planning permission within a time period, between 8 weeks to 16 weeks, dependent of the type of application. Should statutory consultees fail to respond within the specified time period, a local planning authority may proceed to decide the application in the absence of their advice (National Planning Practice Guidance – Paragraph 016 Reference ID: 15-016-20190722).

## **4. OPTIONS**

4.1.1 There are three basic options available which are:

1. To continue with the current practice of accepting and circulating all representations received up to the start of the Committee meeting.
2. Only accept those representations received within the statutory notice periods.
3. Impose a cut-off date some days before the Committee meeting but which allows representations after the statutory period. In addition, to only allow later representations to be reported on the grounds of new material considerations being raised which are of relevant to the committee's decision. This will include any representations being made against the publication of a committee report.

## **5. Advantages and disadvantages**

- 5.1.1 The advantage of option 1 is that it allows third parties to submit additional representations they have for consideration by the Committee. This can include any representations they have with respect to a published committee report. It will allow third parties a voice i.e., that they feel their concerns are thoroughly and comprehensively considered before any decisions are made by the Committee before a decision is made.
- 5.1.2 It also allows for any new comments from statutory consultees to be reported where, for example, revised plans have been submitted or they were unable to provide comments prior to the publication of the Committee Report. However, the disadvantages of the existing process are set out earlier in this report.
- 5.1.3 The advantage of option 2 is that the deadline can be very clearly set out in the statutory notice / advert, but a disadvantage is that it gives limited time and people may not become aware of the application until later on, for example, after the publication of the Committee agenda. In addition, there have been instances where residents have complained that they have not received formal notification of the application via letter. This may result in comments or representations being made after the statutory notice period. A strict earlier deadline could lead to complaints to the Council or to the Local Government and Social Care Ombudsman if third parties believe that their concerns regarding a particular development have not been appropriately considered by the Council before a decision is made.
- 5.1.4 Option 3 is considered a better option, it will allow the public a longer period for responses to be made than option 2. In addition, giving discretion to the Assistant Director of Planning and Regulation in consultation with the Chair, to receive late representations would allow flexibility e.g., for consideration of comments from statutory consultees. In addition, it also allows a short time for representations to be made after the publication of the Committee reports whilst still providing sufficient time for distribution to and consideration by committee members. However, one disadvantage is that unlike option 2, a specific cut off date cannot be given in the statutory notification.
- 5.1.5 Option 3 is considered to be the best and fairest approach when it comes to reporting late representations. It also reduces the risk of challenge and complaints being made against the Council.

## **6. FLEXIBILITY**

- 6.1.1 Whatever option Members adopt, there must be some flexibility to take account of exceptional circumstances. For example, where the applicant proposes changes to the submitted scheme after the end of the cut-off date for receipt of representations. As such, it is therefore suggested that the Assistant Director of Planning and Regulation, in consultation with the Chair of the Committee, are given authority to accept late objections in exceptional circumstances once the committee agenda has been published.