

APPENDIX J

WAVERLEY BOROUGH COUNCIL

COMMUNITY OVERVIEW AND SCRUTINY COMMITTEE

19 NOVEMBER 2012

EXECUTIVE – 4 DECEMBER 2012

Title:

UPDATE ON GOVERNMENT CHANGES FOR THE PLANNING SYSTEM

[Portfolio Holder: Councillor Bryn Morgan]

[Wards Affected: All]

Summary and purpose:

The purpose of this report is to update the Executive on changes to the planning system and highlight some of the issues for service delivery. The Community O&S Committee considered the report at its meeting on 19 November and Members comments are noted at the end of the report.

How this report relates to the Council's Corporate Priorities:

The planning system delivers affordable housing and strives to protect Waverley's environment while meeting development needs.

Equality and Diversity Implications:

Legislation requires that the Council takes into account equality and diversity issues when making planning decisions. The Government's reform of the planning system may hinder the ability of local communities to influence the development needed to meet Waverley's diverse needs.

Environment and Climate Change Implications:

An effective planning system is vital to protecting the environment and addressing climate change.

Resource/Value for Money Implications:

Some of the Government's proposals may incur additional costs to the Council, or result in reduced income. These are highlighted in the report, although the precise financial impact is difficult to predict in advance. The proposal to increase planning fees is welcomed and is estimated to increase income by £100,000 in a full year, but falls a considerable way short of full cost recovery for the development control function. If a figure of £30,000 is assumed to cover the additional costs and loss of income, the net additional income would still be £70,000.

Legal Implications:

Legislative changes, both definitive and proposed, are discussed within the report.

1. Introduction

- 1.1 The Government has put in place very significant changes to the planning system over the past two years. A major review of national planning policy resulted in the publication of the National Planning Policy Framework in March 2012 together with the anticipated removal of the regional planning framework. It is now embarking on a raft of further legislative and procedural changes with the intention of freeing up constraints on development in order to help stimulate economic growth.
- 1.2 This note summarises those changes under three headings.
- (1) The changes that have already taken place;
 - (2) Changes that will definitely happen; and
 - (3) Proposed (possible) changes; (not yet formally agreed by Parliament; subject to consultation or not yet finally published).

2. Changes that have already taken place

2.1 Permitted development and re-submission of planning applications

- 2.1.1 From 1 October 2012, new permitted development provisions have allowed the change of use of the first floor above a retail shop to provide two separate residential units – previously it was only one.
- 2.1.2 In addition, rules have been changed to allow the submission of applications to extend the time period for implementation of existing permissions. Previously only permissions that were valid before 1 October 2009 were subject to this provision; this has been rolled forward to include permissions valid before 1 October 2010. This means that an existing permission with a three-year time period for implementation could be re-granted to give it a further three years in which it can be implemented.
- 2.1.3 From 12 October 2012 the ‘deemed consent’ rules for flying of flags have been widened, under the Advertisement Regulations.
- 2.1.4 **Officer comment:** the ability to allow change of use of the first floors of shops to two flats may raise concerns about quality of accommodation and parking pressures. The other changes do not raise any concerns.

2.2 The 'Planning Guarantee'

2.2.1 This was announced as part of the Government's Plan for Growth in March 2011, and is the means of measuring performance of Local Planning Authorities and the Inspectorate in terms of speed of handling planning applications. The 13-week target for major applications and 8-week target for others remain. However, this additional measure means no application should spend more than 26 weeks with either the planning authority or the Inspectorate if the Guarantee is to be met. The 26 weeks allows time for an appeal to be determined if the initial application is refused by the planning authority. The first Planning Guarantee monitoring report published in September 2012 indicated that in Waverley 99% of all applications are determined in 26 weeks. This places Waverley joint 20th out of the 316 English councils in terms of performance. Despite this, the measure is of arguable benefit.

3. Changes that will happen

3.1 Planning fees

3.1.1 Regulations were laid before Parliament in October to allow for a 15% increase in planning fees across the board. For Waverley, this is equivalent to £100,000 additional estimated income in a full year.

3.1.2 **Officer comment:** this is the first increase since 2008 and goes some way to respond to inflationary pressures. The changes follow the Government's abandonment of proposals to allow planning fees to be set locally. Whilst the 15% increase is welcome, fees will continue to fall significantly below full cost recovery.

3.2 Planning Decision Notices

3.2.1 From 1 December 2012, each planning decision (approval or refusal) must include a statement explaining how the planning authority has handled the application in a "positive and proactive" way. At Waverley this will be stated as an informative on the Decision Notice together with some text in officer reports clarifying how this has happened.

3.2.2 **Officer comment:** The approach that Waverley takes to handling planning applications reflects the Council's Customer Charter and it is both unnecessary and time consuming to include statements confirming a "positive and proactive" approach on each Decision Notice.

4. Proposed changes

4.1 Information requirements on planning applications – consultation July 2012

4.1.1 These proposals include:

- Reducing the information requirements for outline applications.

- Keeping information requirements under regular review
- Amalgamating ownership certificates

4.1.2 **Officer Comment:** A response has previously been sent to the Government supporting these proposals as they reduce the burden of information required of applications. Waverley's practice has been to regularly review information requirements in any case.

4.2 Amendments to Costs Circular Consultation July 2012

4.2.1 In summary this proposes:

- where a Local Planning Authority (LPA) has relied on the advice of a statutory consultee in refusing an application, that consultee would be expected to substantiate its advice on appeal and may be liable to an award of costs against it if any unreasonable behaviour is substantiated.
- The Planning Inspectorate will be allowed to stipulate that costs will not be awarded where a refusal is in accordance with an up-to-date Local Plan.
- That costs will be awarded when an appellant has relied on evidence that is manifestly inaccurate or untrue

4.2.2 **Officer comment:** A response has previously been sent to the Government broadly supporting these proposals

4.3 Further permitted development changes

4.3.1 In September 2012 the Government announced a number of possible incentives to boost the economy by removing what it perceives as unnecessary red tape across the planning system. Of particular note was the intention to make changes to permitted development rules including:

- Allowing bigger extensions on houses up to 8 metres long for detached houses and 6 metres for others, for a temporary period of three years; so long as 50% of the garden remains.
- Expansion to businesses premises up to 100 square metres and industrial units by 200 square metres (in non protected areas).
- Enable changes of use from commercial to residential, while providing an opportunity to seek a local exemption where there will be an adverse economic impact.

4.3.2 Many of the other incentives were included in the Growth and Infrastructure Bill referred to below.

4.3.3 **Officer comment:** These proposals are based on anecdotal evidence that the need to get permission for small scale projects is holding up development. However, the cost of submitting planning applications is very small in comparison to the overall costs of a development project and the vast majority (90%) are approved nationally. The relaxation in permitted development for residential extensions has raised strong concerns about the potential impact on residential amenity. By removing large extensions from planning control, the Government has also failed to recognise the important role of the planning

process in terms of adding value through the giving of advice and mediating conflict via the democratic process. To date, no further detail has been published and it is hoped that the Government will withdraw these ill-judged proposals in the light of their almost universal condemnation.

4.4 Planning Performance Agreements

4.4.1 In September 2012 the Government also restated its desire to see increased use of Planning Performance Agreements (PPAs). These are a project management tool typically used to meet the challenges of handling large, complex development proposals. They are intended to deliver high quality outcomes at various stages in the planning process from pre-application to discharge of conditions. They are based on collaborative processes and provide greater certainty and transparency to planning application assessment and decision making.

4.4.2 **Officer comment-** Waverley has not entered into PPAs with developers, but the same principles of project management have been applied to a number of larger developments in the Borough. This has helped deliver effective pre-application engagement with both the developer and the local community to achieve efficient decision making and quality outcomes. Waverley also pioneered the use of Development Control Consultative Forums (DCCF) for significant proposals.

4.5 Temporary Stop Notices

4.5.1 In October 2012, the Government announced that it will amend rules regarding use of Temporary Stop Notices (TSNs) in respect of unauthorised development to prevent unauthorised traveller sites. Currently TSNs cannot be used where the alleged breach relates to caravans which are used as a main residence.

4.5.2 **Officer comment** - This change should be welcomed.

4.6 Growth and Infrastructure Bill

4.6.1 This was published on 18 October 2012 with the purpose of reducing unnecessary bureaucracy, giving businesses confidence to invest and unlocking infrastructure projects. The main clauses relevant to planning at the District level will:

- Enable the Secretary of State to designate authorities as “poorly performing”. This includes planning applications and applications for listed building and conservation consents. (This is linked to the ‘Planning Guarantee’ monitoring process set out above). Once an authority is designated as ‘poorly performing’ applicants will be able to apply directly to the Secretary of State for determination of their application.

Officer Comment: Waverley currently performs in the top quartile nationally in terms of speed of decision making. However the definition of poorly performing extend to the proportion of decisions allowed. The assumption being the lower the better. There are other equally important measures, not least the quality of development allowed. These proposals to take decisions away from local communities and hand to civil servants are at odds with the principles of localism.

- Facilitate appeals to the Secretary of State against a Section 106 agreement for affordable housing element.

Officer comment: Councils can already renegotiate a Section 106 agreement on a voluntary basis and this change seems odd where two parties have voluntarily entered into an agreement in the first place. The likely outcome of this is a reduction in affordable housing provision and additional costs on councils who will need to resource their defence of the provision of affordable housing in appeals.

- Limit the information that a (LPA) can require when determining a planning application to those issues that will have a material consideration in the determination of the application.

Officer comment: Waverley has an approved validation list which is reviewed regularly to ensure that it does not require unnecessary information.

- Amend the Town and Village Green registration process to prevent a Town and Village Green application from delaying or preventing development in cases when a planning application is in progress or has been approved.

Officer comment: In principle, this provision should be welcomed as it has been used to frustrate affordable housing schemes particularly in rural areas.

- Add commercial and business projects to the Major Infrastructure Regime under the Planning Act 2008. The Secretary of State will direct which developments this will apply to but are likely to be nationally significant infrastructure include transport, energy, or waste.

Officer comment: This is unlikely to be an issue in Waverley where major infrastructure projects are rare.

- The Secretary of State will be able to award costs between parties at planning appeals and set out circumstances when costs between parties should be awarded, and also be able to recover proportional costs incurred by the Secretary of State.

Officer comment: This will increase the frequency and level of awards of costs and it is important that decisions made by Waverley are robust and based on firm evidence to avoid financial impacts.

4.7 Further changes to the Community Infrastructure Levy (CIL) Regulations

4.7.1 The Government is proposing removal of the threat of 'double charges' of infrastructure on existing consents through CIL. Draft Regulations laid in Parliament and soon to be debated include measures to stop applicants being charged the levy twice, if they amend existing planning permissions through S.73 of the Town and Country Planning Act.

4.7.2 **Officer comment** – this is a sensible proposal.

4.8 Further review of national policy

4.8.1 In October 2012, the Government announced that Lord Matthew Taylor of Goss Moor has been appointed to lead a review of the existing 6,000 pages of planning practice guidance which supports the implementation of national planning policy, and which the Department for Communities and Local Government owns or has jointly badged with other Government Departments or agencies. The aim is to enable the production of an accessible and more effective set of practice guidance, dramatically reducing the existing guidance, and ensuring that new guidance supports effective planning.

4.8.2 **Officer comment** - The District Councils' Network is coordinating a response to this and has requested Waverley's views. In principle, a review of guidance is welcomed but it will be important to ensure that essential guidance particularly on technical issues is retained.

4.9 Changes to the Listed Building Consent Regime.

4.9.1 The Government will be introducing Certificate of Lawful Works which is a formal means for building owners to receive confirmation whether listed building consent is required or not. A new offence will be created of providing false or misleading information on such an application, and there will be a right of appeal. There will be no opportunity to apply retrospectively for a Certificate.

4.9.2 **Officer comment:** Waverley already provides this confirmation through its pre-application process. In principle, the changes seem sensible.

4.10 Changes to Building Regulations

4.10.1 In October 2012 the Government set up a group to review all regulations and standards associated with the quality of housing, including issues such as:

- Structural safety
- Fire safety
- Toxic substances
- Conservation of fuel and power
- Access and facilities for people with disabilities
- Electrical safety.

4.10.2 The terms of reference of the review is to rationalise the entire framework of building regulations and national and local housing standards, with the overall goal to “significantly” cut back on the number of regulations

4.10.3 **Officer comment:** Building regulations address the technical aspects of construction and are intended to make sure that buildings are structurally sound, safe in the event of fire, have adequate drainage, ventilation and toilet facilities, are accessible for disabled persons and are energy efficient. While rationalisation may offer some benefits it is important not to lose sight of the need for homes to be more sustainable in future as well securing the health and safety of occupiers. The Council’s Building Control Team administers the Building Regulations and is highly regarded by developers for its pragmatic interpretation of standards and technical knowledge.

4.11 Financial Implications

4.11.1 Some of the Government’s proposals may incur additional costs to the Council, or result in reduced income. These are referred to in the report and include the potential of the Secretary of State to award costs at Planning Appeals; the need to resource the defence of Affordable Housing Contributions on Appeals; concessions over the extension of time on existing permissions; and further proposed permitted development changes that could result in a loss of income in the range £3,000 to £10,000 pa. There is also a potential loss of section 106 contributions likely to lead to a reduction in new affordable housing provision. The proposal to increase planning fees is estimated to increase income by £100,000 in a full year, but falls a considerable way short of full cost recovery for the development control function. A prudent figure of £30,000 could be assumed to cover the additional expenditure and loss of income, which would leave net additional income of £70,000 from all the proposals. The potential for further award of costs by the Secretary of State is of more concern. Currently, the Council does not budget for the payment of costs, but the amounts awarded can be significant and unpredictable

5. Comments from the Community O&S Committee

5.1 The Community O&S Committee considered the report at its meeting on 19 November and requested that the following comments be considered by the Executive:

1. The Committee endorsed the officers comments contained in the report about changes to the planning system and felt that all the issues raised should be noted in a strongly worded letter to Government. There was particular concern about the proposals in relation to further permitted development rights. There was also some concern about pressure on the high street because of the proposals allowing change of use of the first floors of shops to two flats which could add to parking pressures in town centres; and

2. The Committee noted that planning fees continued to fall significantly below full cost of recovery. It was noted that a benchmarking exercise had recently taken place but the Government would still not allow fees to be set locally. The Committee supported officers in highlighting this issue to Government as, although the proposal to allow fees to be increased by 15% was welcomed, this still would not recover the full costs involved.

6. Conclusion

- 6.1 It is entirely right that the planning system should be subject to occasional review to ensure that it is not unnecessarily creating barriers to necessary growth. Some of the Coalition Government's proposals are sensible in that they will reduce bureaucracy. Other changes, such as reviewing planning validation requirements, are already reflected in Waverley's day to day activities. However, a number of the proposals outlined above are ill considered, are likely to reduce the provision of affordable housing and remove control from local people. They may therefore be counterproductive. Communities and their elected representatives are less likely to embrace growth if feel they cannot retain enough powers to maintain and improve the character of local areas for the benefit of businesses and communities.
- 6.2 It is significant that the Local Government Association and the British Property Federation have joined forces in a press release to appeal to the government to let the changes to the planning system bed in rather than impose more rounds of reform.
- 6.3 More generally, all the evidence suggests that it is not the planning system which is holding back growth but lack of liquidity in the finance market and the shortage of mortgages for first time buyers.

Recommendation

The Executive is recommended to

1. **consider the contents of the report;**
2. **endorse the comments of the Community Overview and Scrutiny Committee set out in paragraph 5 of the report; and**
3. **agree that a response be sent to the Government expressing Waverley's concerns about the proposed changes to the planning system.**

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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