

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	Delegated Powers
2.	Date:	24th January 2005
3.	Title:	Changes to the Development Control System
4.	Programme Area:	Economic and Development Services

5. Summary

This report summarises the Government consultation paper on changes to the Development Control system and sets out our suggested response.

6. Recommendations

That the Office of the Deputy Prime Minister be informed of our views as set out in this report.

That the report be referred to Planning Board for information.

7. Proposals and details.

Consultation is now taking place on a number of the provisions of the new planning act :-

1. Power to decline to determine repeat applications
2. Duration of permission/consent.
3. Duty to respond to consultation.
4. Regional Planning Bodies as statutory consultees.
5. Major Infrastructure Projects – economic impact report.

1. Power to decline to determine applications

New powers are intended to prohibit the use of repeated applications that are intended to reduce opposition to undesirable developments over time.

We currently have powers to decline to determine an application which is the same as one within the previous two years which was called in and refused or dismissed on appeal. Section 43 of the new Act extends this power to decline to determine an application which is similar to one refused within the preceding two years. There are three scenarios:-

1. If an application is submitted which has been refused on appeal or call in, an LPA can decline to determine any similar application within the following 2 years unless there has been a significant change in relevant considerations.
2. If an application is submitted similar to one refused by the LPA within the last 2 years, the LPA may decline to determine it if the applicant has appealed against the original refusal and it has been dismissed. Where there is no appeal it should be determined.
3. If a third similar application is submitted within 2 years of the second one being refused and the 2 previous ones have been refused by the LPA, they may decline to determine it if there has been no appeal on previous ones.

The power to decline also covers applications for Listed Building Consent, Conservation Area Consent and applications for prior approval.

LPA's should only use these powers where they believe the applicant is trying to wear them down and not where a genuine attempt has been made to make it more acceptable. Judicial review is available to applicants if they consider the LPA is acting unreasonably.

Guidance is provided on the meaning of "Similar" and "Significant".

Where an LPA decline to determine an application they should notify the applicant in writing that it has exercised it's power under section 70A or 81A and return it to the applicant. It should then be treated as withdrawn.

Applicants have a right of appeal against non-determination of a second application providing they have not appealed against the first. This provision comes into effect on the date the new section 70A takes effect, even if the previous proposal was turned down before that date.

2. Duration of permission and consent

Section 51 of the new Act amends time period for works to begin to 3 years. All permissions consents should have this time period unless otherwise agreed. LPA's can agree shorter or longer periods where appropriate to size and nature of the development.

The time period for which development granted outline permission has to be begun within 2 years of date of final reserved matters approval rather than 5 years from outline permission date.

This section of the Act also prevents an extension to the agreed period of validity without submission of a new application.

This time period has been introduced to encourage development to take place at an early stage and for most schemes such time will be adequate.

In some cases this can be substituted under section 91(1)(b) depending on size and nature.

Also, time limits can be flexibly applied to phasing of major schemes, but any condition must be applied at outline stage.

The effect of the time limit for commencement is to prohibit development to be begun after that date. A further application must be made, the time period cannot be varied.

3. Duty to respond to consultation

Statutory consultees will be required to respond to consultation within a set time period under the provisions of section 54 and article 6 of the GPDO. The Sec. of State is also empowered to require statutory consultees to submit a report to him on their performance against the statutory deadline.

Article 11A of the GDPO sets the time period at 21 days and introduces the requirement to report annually on performance against this target.

These powers are intended to assist with the speedier submission of the information necessary to enable a planning application to be determined.

The duty to respond also applies to pre application advice from applicants.

Obviously sufficient information must be provided to consultees for them to achieve this. i.e. all relevant information must be sent. 21 day period does not begin until they have received this.

A holding reply is not a substantive response.

Where other legislation sets a different time period e.g. English Nature under Wildlife and Countryside Act 1981, that time limit is not superseded.

Time extensions may be agreed in certain cases with both parties.

Determination of applications should not take place until the 21 day period has lapsed.

Comments are requested on the alignment of the period after which LPA's can determine an application within which statutory consultees are required to respond as 21 days, (or less if the consultee responds earlier).

4. Consultation with Regional Planning Bodies

Para. 16(4) of Sched. 6 of the new Act relates to a provision to make the Regional Planning Body a statutory consultee on certain types of applications with a 21 day

response period. These are likely to be applications of major importance for the implementation of the Regional Spatial Strategy or policies because of its scale, nature or location. They may also notify LPA's of other applications on which they wish to be consulted.

5. Major Infrastructure Projects

Section 76A of the new Act requires the preparation of an economic impact report, (EIR), in relation to major infrastructure projects, (MIPs), referred to the Secretary of State.

If he calls in an application there will therefore be a need to produce such a report. Consultation is on the form and content of such a report contained in draft guidance.

In many cases an economic feasibility study of some sort will have been carried out, e.g. on airports and runways, ports, trunk roads, rail schemes, power stations etc. Comments are requested on the extra cost to the developer, whether this already occurs for large projects and the usefulness of this proposal.

8. Finance

No implications

9. Risks and Uncertainties

None identified

10. Policy and Performance Agenda Implications

These changes will impact on BV109 (Speed of application decision), which impacts on the Council's CPA rating.

11. Background Papers and Consultation

Change to the Development Control system, a consultation paper - November 2004. Planning and Compulsory Purchase Act 2004.

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