

Bath & North East Somerset Council

MEETING:	Development Control Committee	
MEETING DATE:	31st July 2013	AGENDA ITEM NUMBER
TITLE:	Planning performance and the 'Planning Guarantee'	
WARD:	District Wide	
AN OPEN PUBLIC ITEM		

1 THE ISSUE

- 1.1 At the request of Cllr Tim Ball this report has been drafted to outline procedural changes announced by the Government to the way in which major planning applications may be handled. In November 2012 the Government published a consultation on 'planning performance and the planning guarantee'. The consultation was in support of clause 1 in the Growth and Infrastructure Bill that was before Parliament at the time, and which would allow planning applications to be submitted directly to the Secretary of State if a local planning authority was designated on the basis of poor performance. The Bill received Royal Assent in April this year, with the relevant provisions contained in section 1 and schedule 1 to the Growth and Infrastructure Act 2013.
- 1.2 Where an Authority is designated this reform will give applicants the choice of an alternative application route, where a local planning authority has a record of failing to decide applications for major development on time (meaning within 13 weeks unless they are subject to environmental impact assessment, in which case a 16 week limit applies), or where a significant proportion of the authority's decisions have been challenged successfully at appeal. The measures are intended to allow decisions to be made more quickly, in order to support growth and provide greater certainty for local communities. The measures will only relate to proposals for major applications, i.e. housing schemes of more than 10 houses (or application sites for housing exceeding 0.5 hectares in size; development involving 1,000 sq.m or more of new floor-space or a development comprising a site area of 1 hectare or more.
- 1.3 In determining whether to designate authorities for poor performance the Government proposes to monitor and assess performance based upon speed of decision making and quality of decisions. The Government has laid before the House of Parliament measures which it proposes to use to designate authorities. The Government intends that initial designations will be made in October 2013.
- 1.4 **Councils that have determined less than 30% of all major application from June 2011-June 2013 within the statutory period** can be designated. The second reason for which designation may take place is where a Council's has had **more than 20% of major decisions overturned at appeal**. The 20% threshold assessment figure is to be calculated by working out the percentage of major applications which are refused and

allowed at appeal as a percentage of the overall number of major application decisions (both permissions and refusals) issued by the Authority during the assessment period. For example if 100 major applications were received over the two year assessment period and 10 were refused planning permission with 5 of these being overturned at appeal then the overall figure for the purposes of the assessment would be 5%.

- 1.5 Designations are proposed to be made once a year and will be in place for at least a year. Annually there would be the possibility of de-designation if satisfactory improvements are made. Where an authority is designated it will be expected to produce an action plan addressing areas of weakness which it identifies as having contributed to its under-performance.
- 1.6 Where a planning authority is designated, the Growth and Infrastructure Act 2013 would give applicants the option of applying for planning permission for major development directly to the Secretary of State. Applicants could if they wish alternatively continue to apply to the designated authority in the usual way. It is proposed that the Planning Inspectorate determine applications on behalf of the Secretary of State. Pre application advice could be provided by the local authority or the Planning inspectorate, or both. It is proposed that the Planning Inspectorate should choose the most appropriate decision making procedure to employ on a case by case basis, which could be an abbreviated form of hearing or inquiry or in most cases, written representations.
- 1.7 The authority would remain responsible for some administrative tasks related to the application including putting up site notices and notifying neighbours of the application. **The authority would be consulted on such applications but would not receive any of the planning application fee** which would go to the Planning Inspectorate.
- 1.8 The Government is also proposing to introduce the 'Planning Guarantee'. The Planning Guarantee, was announced in the Government's Plan for Growth (March 2011). The intention is that cases should spend no more than 26 weeks with either the local planning authority or, in the case of appeals, the Planning Inspectorate. While the risk of designation through poor performance should help to deliver the Guarantee, the Government now proposes also to also require, as an additional measure, a refund of the planning application fee where a planning application remains undecided after 26 weeks.
- 1.9 Further legislation is expected to be introduced prior to October 2013 where required to instigate these new measures.

1.10 THE IMPLICATIONS FOR BATH AND NORTH EAST SOMERSET COUNCIL

- 1.11 During the assessment period June 2011- June 2013 the Council determined 51% of major applications within target time and the Council would not be at risk of designation on this basis. Performance on major applications however remains an important issue and ensuring that decisions are made in a timely fashion is a priority for the service particularly because performance will continue to be monitored by the Government pending further rounds of designations.

- 1.12** The second measure relates to performance on planning appeals over the same period. The Council has received 8 major planning appeals during this time two of which have been withdrawn. Five of the appeals which have been determined have been allowed with one appeal dismissed. This figure of allowed appeals needs then to be worked out as a percentage of overall major planning decisions taken which was 138 over the two year period. The Council has therefore lost 3.6% of major decisions which is significantly below the 20% threshold figure above which designation would be possible.
- 1.13** Nevertheless it is important that performance on major appeals is improved to avoid any future risk of designation. Of the five appeals which have been lost, four have been Development Control Committee overturns of Officer recommendations to permit major proposals. All committee refusals of major applications have been lost at appeal during the two year period. Of the overall 5 appeals which have been lost, in 3 cases costs have been awarded against the Council totalling over £153,000 during the two year period. This does not take into account the Council's own costs incurred in defending major appeals which can be significant. For example the Council's own costs in defending the recently allowed Maynard Terrace appeal at Clutton were circa £50,000.
- 1.14** If performance on major planning appeals remains poor and there is a continued upturn in such appeals, as is currently being experienced, the risk of designation is likely to heighten which could ultimately take decision making powers away from the local level in respect of major planning proposals with applicants applying directly to the Planning Inspectorate.

2 RECOMMENDATION

- 2.1** The Development Control Committee is asked to note the attached report and its contents.