

REPORT TO THE OVERVIEW AND SCRUTINY COMMITTEE

Report No.13

Date of Meeting	29 March 2007
Title of Report	Major Planning Application Protocol
Link to Corporate Priorities	1) Customer Focus, Equality and Diversity, 2) Partnership Working, 3) Waste and Recycling, 4) Cleaner Safer and Better Streets, 5) Spatial Planning, 6) Buoyant Economy, 7) Healthy Lifestyles
Public Report	Yes

Summary of Report

At the meeting of the Overview & Scrutiny Committee on 30th November 2006, it was agreed to establish a Scrutiny Task Group to consider aspects of the Planning Service, including a review of the major applications process and the value derived from Section 106 Legal Agreements, associated with major developments.

The Task Group met on 19th December 2006, when it was resolved that officers would produce a protocol detailing the whole process, to create more certainty and value for all concerned.

The draft protocol and information pack attached at Appendix A has been circulated to Parish and Town Councils and over 100 stakeholders who access the service, for the comments on the content and new approach to dealing with applications.

This report asks Members to endorse the Major Applications Protocol. Once approved, the protocol will go to the Development Control Committee on 25th April 2007.

Officer Recommendations

Recommend that the draft protocol be considered by the Development Control Committee for adoption.

Other than those implications agreed with the relevant Officers and referred to below, there are no other implications associated with this report.

Financial Implications	Legal Implications	Community & Environmental Implications	Human Resources Implications	Equality & Diversity Implications
Yes	Yes	Yes	None	None

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1. Introduction

- 1.1 This report relates to the outcomes required by the Overview & Scrutiny Task Group which met on December 19th 2006.

2. Options and Options Appraisal

- 2.1 Option 1:
To endorse the Major Applications Protocol and 'What to Expect' Information Pack and recommend to Development Control Committee that they adopt the documents.
- 2.2 Option 2:
To endorse the Major Applications Protocol and 'What to Expect' Information Pack with revisions and recommend to Development Control Committee that they adopt the documents.
- 2.3 Option 3:
To instruct Officers not to proceed with a protocol for the major application and Section 106 process.

3. Background Information

- 3.1 At its meeting on 19th October 2006, the Committee resolved that a Planning Task Group be set up to consider the financial implications of the Planning Delivery Grant and Section 106 Legal Agreements.
- 3.2 The terms of reference for the Task Group were agreed at the meeting of the Overview & Scrutiny Committee and included:
- To review the current major applications process
 - To improve the value of Section 106 Agreements to the Council
 - To consider the future direction of the Planning Delivery Grant
 - To recommend lines of action
- 3.3 The Task Group met on December 19th 2006 and considered various information, including the views of some other Members from a survey.
- 3.4 In relation to the major application process including 106 Agreements, it was agreed that Officers would produce a protocol detailing the whole process, to create more certainty and value for all concerned. It was agreed that this report would be referred to the Overview & Scrutiny Committee on March 29th 2007 and the Development Control Committee on April 25th 2007.
- 3.5 Members were given a review of the risks of the Planning Delivery Grant at its meeting on 25th January 2007.

4. The Major Application Process

- 4.1 The new protocol provides clarity for all groups and individuals involved in the processing of major applications.
- 4.2 Whilst it incorporates many of the practices already undertaken, the following issues are important to the success of the new protocol.

4.3 Pre application discussions and Member involvement

- 4.3.1 There are many instances on major schemes where it is important to highlight relevant local issues at an early stage which may affect the heads of terms of a legal agreement. They originate from many different sources including Town and Parish Councils.
- 4.3.2 It is therefore felt appropriate in certain circumstances for the local ward member to represent the interests of third parties, including the Town and Parish Councils, during the initial discussions

relating to applications. This is on the understanding that they would not comment on the merits of the development, in order not to prejudice their future involvement in the decision making process

4.3.3 Officers would discuss and agree with the relevant Member their involvement in the major application process, at the pre application stage or within two weeks of the submission of a planning application.

4.3.4 In any event, Members will be kept informed with regular updates on the progress of all major applications, throughout the process.

4.4 Decision Making

4.4.1 The protocol will identify the service which applicants and agents can expect from the Council.

4.4.2 By encouraging pre application discussions, community involvement and consultation plus identifying the heads of terms for legal agreements early in the process, it is considered that decisions for permissions can be issued speedily and within the governments target for major planning applications.

4.4.3 However, where applications/agents do not complete Legal Agreements within the appropriate 13 week determination period, it is proposed that in future, applications will be refused, on the basis that the outstanding issue has not been resolved, bearing in mind in many cases the applicant/agent has been aware of the requirements and implications since the pre application stage.

5 Major Applications Protocol – Consultation

5.1 It is important that everyone who is involved in processing major applications has the opportunity to comment on the new protocol and new approach.

5.2 The protocol has been circulated to Members, Town and Parish Councils, Developers, Agents, Landowners, Utility Companies and Housing Associations. Some comments have been received and where possible have been incorporated into the document attached at Appendix 1.

5.3 Comments have been received from 11 interested parties. A summary of the comments received are shown below: (See Appendix 2 for list of respondents)

Comment	Response
Pre application advice	
Should the Council be offering pre application advice?	This is widely recognised as best practice by the Audit Commission and forms part of the requirements of the Statement of Community Involvement. It also helps to ensure that high quality developments are built and the infrastructure needs of the local community are met. This service is critical in helping the Council to achieve the National Performance Indicator.
Pre application discussions are a good idea – could the parish councils have the opportunity to get involved in these discussions. This would also help ensure that where appropriate legal agreements benefit the town/parish infrastructure	Protocol amended to help reflect this.
Could the pre application discussions include a site visit	This is often the case – site meetings normally form part of the pre application discussions.
If discussions are in confidence and without prejudice both sides can discuss issues at meetings and go back on their word at a later date.	It would be inappropriate not to undertake discussions in confidence when there are often commercially sensitive issues to be considered.

It is essential that pre application discussions for major planning applications are dealt with by senior or experienced planning officers	This is currently the situation
Should the Chair of Development Control attend discussions.	This could lead to a conflict of interest. The local member will be involved and they will have the opportunity to address the committee if appropriate.
Questions whether pre-application consultation is a legislative requirement.	It is not.
Publicity/Communication	
Can the parish council be regularly updated throughout the process and more involved directly in the process	Agree – protocol amended to reflect this.
More publicity should be undertaken by the council/Developer to ensure local people are aware of the applications and any changes that happen.	The Statement of Community Involvement covers this.
General	
What would be classed as a significant amendment?	Agree – protocol amended to reflect this.
All major applications should go to the Development Control Committee for a decision.	The current scheme of delegation allows all applications to go to the Development Control Committee for a decision when Members or local people are concerned about the impact of the development. It would be contrary to Best Practice for no major applications to be dealt with under delegated powers.
Clarification on the level of involvement of ward members throughout the process.	Agree – protocol amended to reflect this.
Very logical and reasonable approach being taken.	
Useful document which provides certainty to developers and contributes to making the planning system clearer for non-planners.	
Good idea for the Council to seek professional advice on viability of the scheme	
When applications are being recommended for refusal, applicants could be given 3 days notice to have the opportunity to withdraw the application.	Officers will be in contact with applicants/agents throughout the process and it is likely that this would occur in any event.
Environmental Impact Assessment – when would the council wish to receive requests for a Screening Opinion and when would a reply be expected.	This would be discussed at the pre application stage.
When an Environmental Impact Assessment has been submitted with an application the timescale should be extended to take this into account	It is recognised that different timescales apply to such an application. Such proposals will therefore be dealt with in a responsible manner, depending on the particular circumstances relating to that development.
Planning Officers do not always listen to what the Parish/Town Council's opinions are on certain applications.	Whilst it is not always appreciated by Town/Parish Councils that recommendations are dictated by policy, government advice and case law, the suggestion that Town/Parish Councils be

	represented through their local ward member or in exceptional circumstances in their own right in relation to major applications, may help local Town/Parish Councillors understand the constraints of the process.
The emphasis is too much on timescale and too little on quality of decision.	It is recognised that the most important issue is the ultimate quality of the development. However, it must be acknowledged that the government measure local authorities on how quickly they deal with planning applications. It is hoped that this protocol, by encouraging earlier discussions and negotiations with a team of experts, will result in a better quality decision, within timescales.
It would be helpful if the Council could treat all major applications in the manner described.	There are instances that whilst development is technically a major application, due to the scale and nature of the proposals, it may not always be necessary to invoke the protocol, as it has relatively little impact.
Legal Agreements	
The Local Planning Authority should use the opportunity to seek separate professional advice, paid for by the developer, as often as possible.	
It is not always possible to submit heads of terms of a legal agreement with a planning application and experience shows that the agreement should be completed after the Council have resolved to grant consent.	Whilst it is acknowledged that there may be some complex cases, the idea of this protocol is to try and speed up the process, for all concerned.
Concerned that the applicant is forced to pay for arguments against a policy and formulae that may not have been subject to public consultation.	It is considered perfectly reasonable for the Council to seek professional advice on the financial viability of large schemes.

Where appropriate, the feedback has already been incorporated into the document attached at Appendix 1.

6 Financial Implications

- 6.1 It is anticipated that the protocol will provide more financial clarity and certainty for both the Council, applications/agents and third parties, including Town and Parish Councils.

7 Legal Implications

- 7.1 The use of standardised legal agreements in many instances and better communication at an early stage in the process, will help to improve and speed up the process of preparing, drafting and completing agreements.

8 Community and Environmental Implications

- 8.1 The protocol will help to ensure that the new developments are of the highest quality, whilst contributing to the infrastructure needs of the local community.

Risk Analysis

Option 1

By endorsing the protocol, it will help to provide clarity and certainty for all concerned with the process of dealing with major applications. It will also help the Council achieve the National Performance Indicator.

Option 2

By endorsing the protocol, with amendments, in addition to those benefits identified in option 1, it will seek to reassure stakeholders, that they are a valued part of the process.

Option 3

If the protocol is not adopted, the current feeling of uncertainty will continue and the Councils ability to achieve the National Performance Indicator may be affected.

Appendices:	<ul style="list-style-type: none">• Appendix 1 - Major Applications Protocol• Appendix 2 - Major Applications Information Pack
Background Documents Used in the Preparation of this Report:	

Previous Decisions Connected with this Report

Report	Committee & Date	Minute Reference
Planning Scrutiny Task Group	Overview and Scrutiny Committee 30/11/06	0.83
Overview and Scrutiny Task Group Outcomes	Overview and Scrutiny Committee 25/01/07	0.101