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| Subject: | Managing Major Planning Applications (Major Application Protocol) | Status: | For Publication |
| Report to: | Cabinet | Date: | 9 th July 2014 |
| Report of: | Director of Business | Portfolio Holder: | Operational Services and Development Control |
| Key Decision: | <input checked="" type="checkbox"/> Forward Plan <input checked="" type="checkbox"/> | General Exception <input type="checkbox"/> | Special Urgency <input type="checkbox"/> |
| Equality Impact Assessment: | Required: | No | Attached: No |
| Biodiversity Impact Assessment | Required: | No | Attached: n/a |
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| 1. | RECOMMENDATION(S) |
| 1.1 | That the revised protocol for managing major planning applications is introduced by the authority. |
| 1.2 | That the fee structure proposed at Appendix 1 is adopted by the Council. |
| 1.3 | All future minor amendments to the policy to be delegated to the Director of Business in consultation with the Portfolio Holder |
| 1.4 | That member and officer training is provided on the new protocol. |

2. PURPOSE OF REPORT

- 2.1 To recommend the adoption of a major application protocol and fee structure within the Borough that would encourage developers to engage with officers and elected members prior to the submission of major planning applications.

3. CORPORATE PRIORITIES

- 3.1 The matters discussed in this report impact directly on the following corporate priorities:
- **Regenerating Rossendale:** Major planning applications play a significant role in the regeneration of Rossendale and for this reason it is important that sufficient time is provided to allow development proposals to be developed so that they meet the requirements of the development plan and elected members, local residents are given the opportunity to input into the proposals.
 - **Responsive Value for Money Services:** Although the provision of pre-application advice on major development proposals is intended to streamline the development process, it is time-consuming for officers and it is therefore appropriate that the Council should recoup some of the costs associated with this service. A fee structure is therefore proposed at Appendix 2.
 - **Clean Green Rossendale:** Major development proposals would be expected to deliver high quality public realm. A s.106 agreement (a legal agreement between the Council and those with an interest in the site) would normally be drafted to ensure that "public" areas within the development are maintained in

perpetuity by the developer and at their expense. This is normally achieved through the establishment of a management company.

4. RISK ASSESSMENT IMPLICATIONS

4.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:

- It is recognized that revisions/increases to the existing fee structure as prescribed in March 2013 for major applications will be an additional cost to applicants. However, it is considered the revised costs proposed better reflect the cost of the work of officers and the additional input proposed as part of the revisions to the stages in the pre-application process as set out further on in this report. The input also saves the applicant time and further expense later on in the process.
- Other changes to the pre-submission process whilst likely to result in modestly extended timescales for responses (approximately 3 more weeks) from the Council will it is considered allow for additional input including from elected members. It will also, based, on experience over the last 15 months provide a more realistic timeline for responses to be completed by officers than the current protocol. Overall it is considered the changes will result in an improved service for prospective applicants and a more efficient service delivery when applications are formally submitted.

5. BACKGROUND

5.1 By definition, major planning applications comprise large scale development that often has the potential to significantly change an area. The submission and implementation of major planning applications will also necessitate a significant investment from the developer. It is therefore important, for both the local authority and the applicant, to ensure that when applications for major development are submitted, they contain all the information required to determine them within the 13 week period that is prescribed.

5.2 The National Planning Policy Framework recognises¹ that *early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.*

5.3 Major development proposals often have a key role to play in the implementation of a local authorities corporate aims and objectives as well as the implementation of their local planning policies. Local planning authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. Whilst they cannot require that a developer engages with them before submitting a planning application, they should encourage take-up of pre-application services that are available. The National Planning Policy Framework (NPPF) also encourages applicants, who are not already required to do so by law, to engage with the local community before submitting their applications.

¹ National Planning Policy Framework, paragraph 188.

- 5.4 It is in the interests of the local authority and the applicant to ensure that as many issues are resolved at pre-application stage as possible. The Council's Planning Officers possess an understanding of the Borough and the policy framework within which it operates, knowledge that can be shared with developers as a means of ensuring the proposals cover all the policy requirements when they are submitted.
- 5.5 NPPF recognises that *the more issues that can be resolved at pre-application stage, the greater the benefits. For their role in the planning system to be effective and positive, statutory planning consultees will need to take the same early, pro-active approach, and provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs.*
- 5.6 There are therefore a number of key elements associated with the pre-application process:
- Early consultation with planning officers so that issues can be identified and advice on the principle of the development can be provided.
 - Recognition of the role played by elected members in the decision making process and the need to engage with elected members at the pre-application process.
 - Recognition of the role played by the local community and the need for applicants' to engage with the local community prior to submission of a planning application.
 - Recognition of the role played by statutory consultees and the benefits associated with early engagement with these agencies.
 - Recognition that the pre-application consultation is an iterative process that should contribute towards the improvement of the development proposal through the early identification of issues.
- 5.7 In the event that a planning application does not contain sufficient information to allow it to be favourably determined, the applicant will be asked to withdraw the planning application with a view to resubmitting it at a later date. If the applicant is unwilling to withdraw the application it may be refused on the basis that it contains insufficient information.
- 5.8 Pre-application engagement is therefore strongly supported by the National Planning Policy Framework and, if applied properly, should benefit the developer and the local authority.
- 5.9 Accordingly, since March 2013, Rossendale has offered a pre-application service for applicants including for those seeking to submit major planning applications. Members may recall the report considered at Cabinet 6th March 2013.
- 5.10 Set out below in paragraph 5.14 are the stages now proposed for major applications. These stages contain some revisions from the approach set out in the March 2013 report. In addition it is proposed to revise the fee structure as shown in appendix 1. All of the revisions are summarised in paragraph 5.18. It is proposed that further revisions to the fee structure and processes in relation to minor and

other types of applications will be proposed in a separate paper to cabinet in September 2014.

The Stages Involved in Pre-application Consultation.

- 5.11 There are a number of stages involved in pre-application consultation. The first stage requires the applicant to submit the required information to the local planning authority. This can include relevant forms but, more importantly, should also include a description of the proposed development and relevant plans and information.
- 5.12 The initial stages of the pre-application process are normally treated as confidential between the local authority and the applicant. Pre-application advice, plans / proposals would not therefore be released through requests made under the under Freedom of Information Act unless this has been agreed with the applicant or their agent. When the applicant/agent engages with elected members and undertakes public consultation some information on the proposal will enter the public domain and it will be necessary for the applicant or their agent to determine what is released.
- 5.13 The pre-application advice is often submitted as part of the documentation submitted by the applicant in support of their proposal. At this stage the advice enters the public domain.
- 5.14 The stages are:

Stage 1. Submission of information and Fee by Applicant

The applicant should submit to the local planning authority the following information:

- A location plan at 1:1250 or 1:2500 scale with the site outlined in red;
- A description of the proposed development;
- Draft plans and elevations if these are available that illustrate the proposed layout of the site and information on the scale and design of the proposed development;
- Information on any site investigation work that has been undertaken (for example, ground conditions, trees/hedgerows, ecology etc);
- Information on any work that has been undertaken in support of the proposals (for example, transport assessments, drainage, transport and access, design etc)

The relevant fee should be paid at this stage. A fee schedule is attached at Appendix 1.

Stage 2. Local Authority Consults Statutory Consultees

The local planning authority will seek the view of statutory consultees. This would normally include the Highway Authority (Lancashire County Council) but may also include the Environment Agency, the Coal Authority and other organisations depending upon the nature of the proposed development. The views of other local authority services, such as Environmental Health may also be sought. The responses of the consultees will be forwarded to the applicant and will be taken into consideration by the local planning authority.

The Environment Agency charges for the provision of pre-application advice. In this instance the local planning authority would advise the developer to consult the Environment Agency in the manner prescribed by them.

Stage 3. A meeting with the Local Planning Authority

A meeting will be arranged between the planning officer that will manage the planning application and the applicant and/or their agent. This will provide a valuable opportunity for the applicant to meet the case officers and to explain their proposals and for a discussion around the main issues. The meeting will also provide the planning officer with an opportunity to explain the policy background and to also explain how the pre-application protocol works. The meeting should be used to discuss the following:

- The applicant/agent should be given an opportunity to present their proposals
- The planning officer should set out the relevant policy framework and any other material considerations and seek to identify the key issues.
- The planning officer should ensure that the applicant/agent is aware of what information would be required in support of a planning application, i.e. the Validation Checklist
- The applicant/agent should be given an opportunity to explain their timetable or project plan for the development, including the anticipated date for the submission of the planning application.

Discussions in the above meetings are to be conducted on a confidential basis.

Elected Members

Elected Members play a vital role in the decision making process, as major planning applications ultimately are determined by Planning Committee under the current Council constitution. For this reason, it is important that Elected Members are involved in the development of proposals from an early stage and are able to influence the nature of the proposals before they are submitted.

It is important that Elected Members understand where the site is located and the relationship between the development proposals and neighbouring development. The planning policy framework needs to be understood and members should also be made aware of the key issues. Consultation with Elected Members not only provides the developer opportunity to explain the proposals, but it also provides an opportunity for elected members to ask questions about the proposed development.

Throughout this stage of the process Elected Members need to be mindful of the Code of Conduct on Planning and of the need to declare personal or prejudicial interests. Although the minutes of the pre-application presentation would not normally be published, a record of who attended and key points raised would normally be kept. It is important that Elected Members do not declare their views on the proposed development, but ask questions on matters that might concern them as a means of seeking further information.

As mentioned earlier, pre-application consultation is done on a confidential basis. Accordingly, a prospective developer will be invited to present their proposals to councillors at this early stage in the process. However, it will be for the developer to

consider if they want to present their proposals to councillors. Developers should state at the start of the pre-application process whether they wish for members to be involved in the pre-submission discussions. This is so if they do appropriate arrangements can be made.

Stage 4. A written response from the Local Planning Authority

A written response will be provided by the local planning authority within an agreed timescale (normally 28 days). The response should include the following:

- A description of the proposed development
- A list of the relevant policies – local plan, core strategy, NPPF etc
- Details of the planning history of the site
- Details of consultation responses received
- Observations of the officer, usually presented as a series of sub headings which should address the main issues.
- An indication of the information that should be submitted as part of a planning application, with reference to the Validation Checklist.

The response provided by the local planning authority would normally be treated as confidential unless the applicant or agent gives authority for it to be made public or released under a Freedom of Information request.

Stage 5. Consultation with the local community

Large scale developments will often have an impact on those living next to, or in proximity to the site. It is important that local residents are consulted prior to the formal submission of a planning application so that the applicant /agent is given an opportunity to address any concerns raised.

Pre-application consultation with the local community can take many forms but it would normally be expected to operate in the following way:

- **Inform local residents.** The developer will write to local residents and advise them of their intention to develop the site and to let them know that there will be a public consultation event held in a local venue.
- **Display information** – plans, elevations and (if necessary) photomontages that illustrate the proposed development and its relationship to the neighbouring area. This information can be presented on boards in an appropriate local meeting place that is accessible to local residents. Sometimes this information can be made available to view on line on the developers website.
- **Record Feedback and seek to address issues.** It is important that the views and comments of local residents are recorded and the used as a means of addressing the issues raised prior to the submission of a formal application.

Stage 6. Submission of revised information to local authority

As the proposals go through the consultation process the design of the development may evolve as changes are made to address the observations made. If the scheme changes to the extent that it is significantly different to that which was originally submitted or changes are needed to address a particular concern, the applicant can seek the formal views of the local planning authority on the scheme or part of the scheme. Recognising that many of the issues associated with the development of the site will have already been considered, a lower fee will be charged for follow up meetings and/or written advice.

Stage 7. Submission of Planning Application

When the planning application is submitted it should be accompanied by all the information required by the Council's Validation Checklist and the relevant fee. A draft s.106 agreement should also be included in the information submitted alongside the planning application.

S.106 agreements

- 5.15 In many cases large scale development proposals will be expected to be accompanied by a legal agreement prepared under s.106 of the Town and Country Planning Act. S.106 agreements normally need to be signed by all those with an interest in the land concerned and for this reason the agreements can take time to draft, agree and sign. It is therefore important that the need for an agreement is identified at an early stage and that a draft agreement is included as part of the planning application documentation when it is submitted.
- 5.16 The Council's legal team will prepare a s.106 agreement on behalf of the applicant as a means of ensuring that it meets the necessary requirements. The Council's Legal team charges for this service.

Validation Checklist

- 5.17 The National Planning Policy Framework requires that local planning authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals and reviewed on a frequent basis. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.

Changes in process for majors since the March 2013 report

- 5.18 The main changes introduced in respect of Major Applications compared to the March 13 report are:
- Stage 3 – A formal consultation approach with elected members in which the developer is encouraged to present proposals to elected members. Currently the March 2013 report did not identify this stage though informally officers do advise members of significant pre-submission proposals.
 - Stage 4 – the time period for a written response is to be extended from 10 to 28 days in recognition that experience has shown it can take longer to receive feedback from consultees and to formalise responses on more complex applications
 - Stage 5 – Consultation with local a community. There is an expectation with major proposals in the Rossendale Statement of Community Involvement SCI that developers will undertake consultation with the local community prior to submission of an application. This requirement has now been recognised in this protocol
 - Stage 7 – Inclusion within the protocol of an expectation that a draft Section 106 Obligation should be included along with the planning application.
 - Change in fee structure for Major Applications from a flat rate of £300 plus VAT to identification of 2 categories of major development with a revised fee structure as set out in Appendix 1.

6. OPTIONS

- 6.1 Option 1 - To retain the approach as set out and approved by Cabinet in March 2013.
- 6.2 Option 2 - To undertake revisions to the approach as set out in Section 5 of this report.
- 6.3 The pre-application submission service and the level of interest from prospective applicants have been higher in respect of use than was anticipated in March 2013. Having regard to the experience gained to date by officers and additional insight by way of learning from the shared service approach on Development Control Matters, it is considered that revisions to the pre-application process and fee structure should be made. It is proposed that the revisions as proposed will on balance improve the service for customers and has the potential to increase income received for the Council. Accordingly, having to the above options, it is considered that option 2 should be pursued in relation to the pre-application submission approach for Major applications.
- 6.4 A separate review of the fee structure and processes related to other types of applications dealt with by the Planning service is also underway. It is intended that the outcome of this work and proposed revisions to the pre-app charging process in this respect will brought to a further cabinet meeting in September 2014.

COMMENTS FROM STATUTORY OFFICERS

7. SECTION 151 OFFICER

- 7.1 Financial matters are noted in the report

8. MONITORING OFFICER

- 8.1 Legal comments are included within the report

9. POLICY IMPLICATIONS AND CONSULTATION CARRIED OUT.

- 9.1 The proposed protocol is consistent with the approach advocated by Government in the National Planning Policy Framework.
- 9.2 The Portfolio holder has been consulted on the proposals.

Appendix 1. Fee Schedule for Pre-Application Consultation.

IMPORTANT INFORMATION

Rossendale Borough Council

The following charges will be payable in respect of pre-application consultation on major planning applications. These charges are exclusive of VAT at 20%.

There are two categories of major development:

1. A flat rate fee of £360 applies for Major Developments

Major Developments comprise:

- More than 10 dwellings
- 1-4 wind turbines
- Offices / Research / Business and light Industry >1000m² or >1 ha
- Heavy industry / manufacturing / storage and warehousing >1000m² or >1ha
- Retail distribution and servicing >1000m² or >1ha
- All other major developments

£120 is charged for follow up meetings/written advice

2. A flat rate fee of £600 applies for Significant Major Developments

Significant Major Developments comprise:

- 5 or more wind turbines
- 30 or more dwellings (for outline applications a density of 30 dwellings to the hectare will be applied)
- 2000 sq m or more of retail / commercial / industrial floorspace

£240 is charged for follow up meetings/written advice.

Notes

1. This information should be read in conjunction with the document "Pre- Planning Application advice on Householder, Advertisement Minor and Major Development Schemes" as well as the "Pre-application advice note for wind turbines".
2. Payment must be received at the time of the enquiry; cheques should be made payable to Rossendale Borough Council.
3. In respect of requests for written advice following the refusal of planning permission the relevant follow up meeting/written advice charge should be used unless the proposed changes fundamentally change the development scheme.
4. Viability. For pre-application advice proposals that are contrary to policy and a proposal is being justified on the basis of viability there will be a requirement for enquirers to pay for the Council to get viability reports independently assessed by a qualified consultant surveyor/accountant. The Council will normally ask enquirers to pay the consultant direct and in advance of a pre-application advice response.