

Council – 15 June 2006

DRAFT PLANNING GUIDANCE: VALIDATING PLANNING APPLICATIONS

Report of the Head of Planning and Building Control

Statutory Powers: Town and Country Planning Act 1990, Planning and Compulsory Purchase Act 2004.

Financial Implications:

Costs are limited to the production of a document, savings should follow through more effective applications being submitted.

Purpose:

The purpose of this report is to seek the adoption by the Council of a document which sets a good standard of submission for planning applications. This validation document, once adopted, will ensure that all the necessary information needed to determine a planning application is submitted prior to the registration of a planning application. The document indirectly contributes to the delivery of the 6 Councils priorities.

RECOMMENDATIONS

That the Council RESOLVES: -

- (a) To adopt the validation document as a basis for assessing whether planning and other applications should be registered.**
- (b) To support officers in being steadfast in not registering applications which do not meet the standards set by this document.**

Background

- 1 On 15 September 2005, the Community Policy Development Group approved for the purposes of consultation a draft supplementary planning document entitled Validating Planning Applications. The following sets out why such a document is needed; what our consultees have felt about it; and what its status and legal standing would be.
- 2 The current Best Value Performance Indicator 109 sets targets for LPA's to determine; 60% of major applications within 13 weeks; 65% of minor applications within 8 weeks and 80% of 'other' applications within 8 weeks, The Government uses these indicators to assess the performance of local planning authorities, and current PDG allocations are based around these targets. Delays in the processing of applications result from the need to request further technical information to support the application, or to seek financial

contributions during the lifetime of an application, and as such, allow applications to run over time.

- 3 In March 2005, the ODPM published guidance entitled 'Best Practice Guidance on the Validation of Planning Applications'. The Guidance outlined the difficulties Local Planning Authorities often face as a result of requiring additional information during the lifetime of a 'live' application. As such, the ODPM recommended that LPA's prepare and adopt a Supplementary Planning Document (SPD) outlining to applicants the level of detail that must be submitted alongside an application for planning permission.
- 4 Current legislation contained within the Town and Country Planning (General Development Procedure) Order 1995 (GDPO) and the Town and Country Planning (Applications) Regulations 1988 sets out the minimum level of detail required to be submitted alongside an application for planning permission. The legal minimum for an applicant to provide are:-
 - Completion of the appropriate application form
 - A plan identifying the land and any other drawings and information necessary to describe the development
 - A certificate relating to land ownership
 - The appropriate planning fee
- 5 The legislation also gives local planning authorities the power to direct applicants to submit further information if it is felt that the application can not be properly considered and thus determined without additional levels of detail. LPA's may also request additional information during the life of an application. However, in terms of the BVP1 109 targets once an application is registered, it is not possible to 'stop the clock' even if information is required. The Best Practice Guidance recognised this and recommended that LPA's should encourage developers to submit all the necessary information prior to registering the application.
- 6 Your officers responded quickly to ODPM's advice, particularly as they recognised the frustration within the community which arises from having to comment on poor quality submissions. It is a regularly expressed criticism by Town and Parish Councils that applications are poor. Furthermore, poor quality applications can lead to misunderstandings and the risk of bad decisions. The quality of the planning process relies, in part, on the information which is provided with applications. Therefore your officers sought to include the Validation Document as part of the suite of Supplementary Planning Documents (SPD's) which would form part of the emerging LFD. However, despite ODPM initially agreeing to the list of SPDs it subsequently objected to the inclusion of the Validation Document its conclusions were: -

"The overall intention of (The Best Practice Guidance) was to create a useful guide to authorities and applicants about what constitutes a valid application. The recommendation on SPDs is in no way a requirement on authorities.

Furthermore, in the light of some of the issues raised since publication of this guidance, in OPDM's view the use of an SPD for a valuation checklist would be inappropriate for the following reasons:

(i) SPDs have statutory and regulatory requirements, notably community involvement, conformity with a Development Plan Document (DPD) or saved policy and Sustainability Appraisal (SA).

Whilst it may sometimes be possible to find a DPD / saved policy to hang validation on, and it is clearly possible to have the necessary consultation as set out in the Local Development Regulations, the requirement for SA seems unlikely to be met;

(ii) OPDM's letter of 26 November 2004 set out the priorities for documents to be included in the first Local Development Scheme (LDS). The emphasis in there was on realism, and ODPM have sought to keep the number of Local Development Documents (LDDs) in a LDS to an essential minimum; and

(iii) OPDM wants to encourage local planning authorities to move away from a manual of development control details in the Local development Framework and concentrate on more strategic spatial policies.

Therefore, OPDM would like to discourage local planning authorities from including Validation documents as SPDs. Such documents are valuable as support for the Statement of Community Involvement, rather than SPDs in their own right, as they help to clarify the considerations that are important in the handling of planning applications. Where a submitted LDS contains a Validation SPD, OPDM advise that it should be removed in a subsequent LDS (on which there will be no PDG implications). The Validation Guidance is very much seen as an interim document that will need to be updated later in the year, when changes to the GDPO are brought in. OPDM will use that opportunity to clarify the position about validation checklists and SPDs."

- 7 The outcome of this response is that the document would carry less weight. This is extremely disappointing given the acknowledged need and importance of the guidance. It means that the legal power the Council has to refuse to register applications which do not meet the standard are significantly undermined. It means that if officers do refuse to validate an application where they feel the information is incomplete or inadequate this decision could be more successfully challenged through the Planning Inspectorate or Local Government Ombudsman. An application which, just met minimum legal requirements, but had not been registered, could be considered as having been "live" from the date of submission and an appeal against non-determination made even though it remained unregistered. On appeal, the applicants might seek to claim costs because the Council's assessment of the outstanding information had been unreasonable. Despite these potential risks, your officers consider that the advantages of having a rigorous validation procedure outweigh the risks.

Consultation responses

- 8 A consultation exercise was carried out along with the draft SPD on Sport and

Recreation. The results are attached as **Appendix 1**. Generally, the statutory consultees in the planning process are supportive of the approach. Some feel the document is too long and there should be one drafted specifically for householders, because domestic extensions make up the majority of our applications. Others feel their specific interest are not covered and request that additional areas of information be included. Agents representing their own or client's views are less supportive and have suggested the Council is going beyond what the law currently allows. The full set of comments received will be left in the Members room.

The document was produced in separate consultation with the South West Best Practice group which is an informal group open to all the development control managers in the south west. It is endorsed by this group and carries its logo.

Amendments have been made to the document where officers consider this will improve it. Officers agree that a simpler stand-alone version for householders would be useful. A copy of the suggested final version is attached on **Appendix 2**.

Reources

- 9 The guidance on validation encourages applicants to submit detailed information alongside an application for planning permission. The level of information sometimes requires the expertise of Officers from other services, or external agencies to examine the content. This could lead to overburdening of Officers in other departments of the Council, such as Landscape and Recreation, Building Control or Environmental Health, Externally, this may require additional consultation with the Environment Agency, South West Water or the County Council.
- 10 Whilst this approach will have capacity implications in the short term, Members must be minded that the planning authority already ask for this information if it is needed. The SPD does not seek to request additional information, but seeks to change when during the determination period that it is asked for. It is therefore anticipated that overall, there will not be additional information requested in addition to that which is already received.

Risk Assessment

- 11 The introduction of guidance on validation is the first step towards the level of information required with planning applications is sufficient whereby a decision can be properly made. Without such guidance, the authority has no means of ensuring this is achieved which would result in either applications being allowed to run over time, or allowing the quality of decision to diminish. From a service delivery aspect, there are the following risks:

Risk	Mitigation
Thresholds are set a level that results in more information than necessary being provided. This would not really affect the final outcome of a decision, or place additional burden upon Officers, but may be seen as an unreasonable request of the Council.	Applicants have, by virtue of the legislation, the opportunity to demonstrate that certain information is not required.
The guidance does not cater for every development type, or level of detail that could be required, This could result in applications still running over time.	Annual monitoring would be carried out to identify which applications miss the targets and for what reason. However, this reason may not be as a result of lack of information.
Section 106 obligations may miss certain criteria during the pre-application Discussions, which would result in applications running over time.	The purpose of this document is to get applicants to consider what information may be required prior to the submission of an application, rather than submitting and leaving it to the LPA to tell them what is needed. Not all details can be discussed, until the detailed planning stage, but having basic parameters beforehand will reduce any later negotiations.
The Development Control Committee reaches a different view to the Panel and the applicant complains that they were misled by the Panel and have wasted Time and resources.	Presenters to the Panel are advised that its views are not binding on the Council. Applicants must see the Panels advice as similar to that offered by officers. It is provided without prejudice and in good faith.

Human Rights

- 12 Human rights are protected under Planning Legislation. However Members may wish to note that the guidance will help contribute significantly in determining whether an application will effect someone's Human Rights.

Sustainability

- 13 The planning system helps create the conditions for sustainable development. The level of information this guidance requests is fundamental in ensuring all planning decisions are based on the key principles of sustainability.

Conclusion

- 14 Officers consider that the guidance on validation is essential to ensure that the quality of Development Control decisions remains, without compromising the time in which it takes to make a decision. Members should realise the importance of obtaining all the necessary information required to make sound judgements up-front, rather than asking for it at a later date.

- 15 Members will appreciate the difficulties of Development Control, and the pressures Officers at this Council are under. This document is therefore an essential element to the continued performance improvement of the service.

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Head of Planning and Building Control

Council
15 June 2006

Background Documents:

ODPM:

Best Practice Guidance on the Validation of Planning Applications