

Committee: Planning and Licensing Committee	Date: 11 March 2020
Subject: Telecommunication Prior Notification Applications	Wards Affected: All
Report of: Phil Drane, Director of Planning and Economy	Public
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Summary

This report seeks approval to delegate powers to officers when determining applications for permitted development prior notifications that relate to telecommunications development proposals. It is good practice to determine applications in a timely manner. The report aims to reduce risk by making it less likely that these applications will be determined out of time.

Recommendation

Members are asked to:

R1. Approve that the Development Management Team Leader is delegated powers to determine prior notification applications for telecommunication proposals.

Main Report

Introduction and Background

1. Planning applications are assessed for compliance with local and national planning policy across the full range of planning considerations. Not all forms of development require planning permission. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants permitted development rights (a national planning permission) for a wide range of developments that would otherwise need planning permission from the local planning authority. This is done to reduce the load on planning authorities and 'lift the burden' on householders and other developers to undertake minor developments. It is also a tool that the Government use to make it easier for certain types of development to be carried out, reflecting national priorities.

Some of those rights can be exercised without any involvement of the local planning authority, merely requiring the applicant to comply with the limitations specified in the Order, irrespective of the merits of the development. Some permitted development rights use a hybrid system where the developer must notify the local planning authority prior to carrying out the development to establish whether prior approval is required for certain limited specified details. These include 'larger extensions' to dwellings, some changes of use, agricultural and telecommunications development. The issues open to consideration are significantly less than those considered in planning applications. In the case of telecommunications equipment (e.g. telephone masts and related forms of development), consideration of whether prior approval is required is limited to two issues: 1. the siting of development, and 2. the appearance of development. If it is decided that approval of such details is required, the local planning authority also needs to consider whether the details received are acceptable.

2. The period for determining these prior notification applications is time limited, unlike a planning application. Last year case law held that the 56-day determination period could not be extended even with the agreement of the applicant. A recent decision in the Queen's Bench Division, issued on 31 January 2020, reversed that position, however as with any agreement it needs both parties to agree to extend the time. It cannot be assumed that an extension of time will be agreed, especially in cases where the local planning authority considers a proposal to be unacceptable. If the local planning authority does not notify the applicant of its decision in time (i.e. within the 56-day period or an agreed extension), the development is permitted by default.
3. The Council's constitution requires this type of application to be determined by committee. This contrasts with other forms of prior notification (e.g. erection of agricultural buildings, permitted development changes of use or larger residential extensions), which are delegated to officers. These also have finite determination periods and for that reason are delegated to officers. It is not clear why or when Brentwood Borough Council decided that telecom applications could not be delegated to officers – it may have been related to a particular case(s) or a general concern about this type of application.

Issue, Options and Analysis of Options

4. It is good practice to determine applications in a timely manner and avoids unacceptable development being 'authorised' due to decisions being made out of time. The issue addressed in this report relates to risk reduction – to make it less likely that these applications will be determined out of time. It cannot be assumed that extensions of time will be agreed, and therefore the system for handling these applications should not rely on extensions of time being agreed.

5. In principle a delegated decision can be made on any working day. Where powers are not delegated to officers a decision can only be made at a meeting of the Planning and Licensing Committee. Committee dates are normally fixed at the beginning of the civic year with the Planning and Licensing Committee usually taking place each month. Since the beginning of 2019 two Planning and Licensing Committees have been cancelled, the average gap between meetings was 47 days, the longest being 92 days between 12 March and 12 June 2019.
6. Following receipt of any application, it must be validated, considered by the case officer following a site visit, a report written and then agreed by a senior officer. Reports need to be published five clear working days before a committee. Completing this process within the deadlines associated with the committee cycle and then issuing the decision, all within the limited time available for this type of application, is more challenging than determining under delegated powers. In some circumstances it may be impossible, although the recent refusals determined by committee were issued within time (Items 360 and 361, Planning and Licensing Committee, 30 January 2020). On occasion some cases have been determined by committee and issued well within time, for example the recent Orchard Farm case (item 362) was issued in 29 days. However, this is likely to be the exception.
7. The Government is strongly supportive of telecommunications networks and the significant social and economic benefits they provide to individuals, businesses and other organisations. The Council shares this view and supports the general approach to this type of development. However, on occasions, prior notification applications are submitted that relate to proposals that are unacceptable. Telecommunication companies and their agents can expect a proportion of their proposals to slip through the system and become permitted by default. While it is not good practice to let any such decision go out of time, it is particularly unfortunate when a proposal is unacceptable and would have been refused. The height and visual impact of this type of development can be significant and some sites can be susceptible to damage by this form of development. In the last four cases determined by the committee, members have agreed with the officer recommendation. These covered cases where prior approval was not required and others that were refused, resulting in appropriate decisions according to their circumstances.
8. As part of the roll out of 5G it is likely that there will be an increase in applications for new sites, replacement masts and equipment on existing sites. This is likely to mean that there will be more prior notification applications presented to the committee if they are not determined under delegated powers. Furthermore, 5G operates on the basis of smaller cell sizes (more sites) and

the equipment can be less forgiving of camouflage, screening and discreet siting. This may mean that more applications will be submitted that propose unacceptable siting and/or appearance and so would need to be determined and issued promptly to avoid being permitted by default.

9. Retaining the current system and continuing to require these applications to be determined by committee perpetuates the greater risk that some of these applications will go out of time and be 'permitted' by default even where their siting and/or appearance are unacceptably harmful. Delegating powers to officers makes this less likely. This is the basis for other prior notifications being determined under delegated powers and it is proposed that this approach should be extended to telecommunications prior notifications.

Reasons for Recommendation

10. The reason for recommending the delegation of powers to officers when determining telecommunications development proposals is to make it less likely that these applications will go out of time without a decision being made.

Consultation

11. There has been no consultation carried out with regard to this proposal though it has been discussed informally when considering recent applications.

References to Corporate Plan

12. The Corporate Plan 2020-2025 key priorities include growing the economy, protecting our environment, developing our communities and delivering an effective and efficient council. Dealing with this type of application effectively has a part to play in delivering these priorities.

Implications

Financial Implications

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13. None directly arising from this report.

Legal Implications

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14. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants permitted development rights (a national planning permission) for a wide range of developments that would otherwise

need planning permission from the local planning authority. Delegated authority is in place for prior notification applications to ensure required timeframes for the determination of the applications can be achieved. If delegated authority for the determination of telecommunications proposals is approved this would require a change to the Council's Constitution.

Economic Implications

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15. The Council is committed to growing the local economy. Enabling the installation of infrastructure that local businesses are reliant on, such as telecommunications equipment, is an important part of the business environment. Provided proposals are consistent with planning policies and other aspects of the planning process, the Council should look to expediate the decision-making process for the swift determination of telecommunication prior notification applications.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

16. None.

Background Papers

None

Appendices to this report

None