

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
Report Authors: Name: Caroline McCaffrey, Development Management Team Leader Telephone: 01277312603 E-mail: caroline.mccaffrey@brentwood.gov.uk Name: Mike Ovenden, Associate Consultant Planner Telephone: 01277312500 E-mail: mike.ovenden@brentwood.gov.uk	For Decision

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

Name/Title: Jacqueline Van Mellaerts, Director of Corporate Resources
Tel/Email: 01277 312829/jacqueline.vanmellaerts@brentwood.gov.uk

13. None directly arising from this report.

Legal Implications

Name/Title: Alastair Lockhart, Planning Solicitor
Tel/Email: 01277 312526/alastair.lockhart@brentwood.gov.uk

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

Name/Title: Phil Drane, Director of Planning and Economy

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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



Minutes

Planning and Licensing Committee Wednesday, 11th March, 2020

Attendance

Cllr Ms Sanders (Chair)
Cllr McCheyne (Vice-Chair)
Cllr Fryd
Cllr Haigh

Cllr Jakobsson
Cllr Morrissey
Cllr Mynott
Cllr Tanner

Apologies

Cllr Chilvers
Cllr Keeble

Cllr Kerlake
Cllr Tierney

Substitute Present

Cllr Barrett
Cllr Bridge
Cllr Laplain
Cllr Nolan

Also Present

Cllr Foan
Cllr Lockhart
Cllr North
Cllr Hirst
Cllr Poppy
Cllr Mrs Pound
Cllr Parker
Cllr Reed

Officers Present

Zoe Borman	- Governance and Member Support Officer
Philip Drane	- Director of Planning and Economy
Caroline McCaffrey	- Development Management Team Leader
Mike Ovenden	- Associate Consultant Planner
Jean Sharp	- Governance and Member Support Officer
Alastair Lockhart	- Corporate Governance Solicitor
Brendan Johnston	- ECC Highways Strategic Development Engineer
Brooke Pride	- Planning Officer

404. Apologies for Absence

Apologies were received from Cllrs Chilvers, Keeble, Kerlake and Tierney. Cllrs Laplain, G Barratt, Nolan and Bridge were substituting respectively.

405. Minutes of the Previous Meeting

Members **RESOLVED** that the Minutes of the Planning and Licensing Committee meeting held on Thursday 30th January 2020 be approved as a true record.

406. Land South of East Horndon Hall, Tilbury Road, West Horndon, Essex. CM13 3LR - Application No. 19/00315/OUT

This application was reported to committee at the discretion of the Development Management Team Leader as it related to a development of scale which was likely to be of interest to the committee.

The application was deferred by the Planning and Licensing Committee at its meeting on 18 December 2019. The original report was reproduced in its entirety in the agenda and an update was provided at the end in an 'Addendum'.

This was an outline planning application addressing the principle of development with all other matters reserved – i.e. details of access, appearance, landscaping, layout and scale - at this stage. It comprised the demolition of all buildings; construction of new buildings providing 35,000 sqm of class B1b, B1c, B2 and B8 (i.e. research and development, light industrial, general industrial and storage and distribution respectively) floor space and 250 sqm of class A3 (restaurants and cafés) floor space, together with associated vehicle parking, loading, cycle parking and infrastructure.

As an outline application with all matter reserved, specific details of the form of development would be provided at the reserved matters stage if outline planning permission was granted. Nevertheless, an indicative layout plan, parameter plan showing building heights and a plan showing indicative points of access accompanied the application. The former shows 13 new buildings, retention of one existing building. The latter drawing showed all access (at 3 points) being from the Tilbury Road. The current T junction of the A128 and Tilbury Road would be replaced by a roundabout within the existing limits of the highway funded by the developer.

Mr Ovenden, Associate Consultant Planner, presented the application.

The application was recommended for refusal by officers.

Mrs June Palmer was present at the meeting and addressed the committee in objection to the application.

Cllr Foan, Parish Councillor for West Horndon, addressed the committee in objection of the application.

Mr Andrew Tabachnik, the agent for the application, addressed the committee in support of the application.

Following a full discussion Cllr Mynott **MOVED** and Cllr Haigh **SECONDED** a motion to **REFUSE** the application.

A recorded vote was taken and Members voted as follows:

FOR: Cllrs G Barrett, Morrissey, Fryd, Haigh, Laplain and Mynott (6)

AGAINST: Cllrs Bridge, Jakobsson, McCheyne, Nolan, Miss Sanders and Tanner (6)

ABSTAIN: 0

The Chair exercised her casting vote and the motion for **REFUSAL** was **LOST**.

Following a full discussion Cllr Miss Sanders **MOVED** and Cllr McCheyne **SECONDED** that the application be **APPROVED**.

Members voted as follows:

FOR: Cllrs Bridge, Jakobsson, McCheyne, Nolan, Miss Sanders and Tanner (6)

AGAINST: Cllrs G Barrett, Morrissey, Fryd, Haigh, Laplain and Mynott (6)

ABSTAIN: 0

The Chair exercised her casting vote and the motion for **APPROVAL** was **CARRIED**.

Members considered there were very special circumstances:

- The significant economic benefits and sustainability benefits and the absence of an alternative site outweighed the harm identified in the Green Belt
- This development was cited in the emerging Local Development Plan.

As explained at the meeting, due to the nature of the application, the Secretary of State had to be notified of the proposal to grant planning permission, prior to issuing the decision. The Secretary of State responded, confirmed he would not intervene and the application should be determined by the planning authority. The permission has since been issued.

407. 37A Hanging Hill Lane, Hutton, Brentwood. CM13 2HY - Application No. 19/01551/FUL

The application had been referred to the Committee at the request of Cllr Hirst for the following reasons:

Excessive bulk and poor design resulting in detriment to the character of the area and to the amenity of residents in contravention of CP1; previous over-development of the same site had been withdrawn on advice. This application was not sufficiently different. It was hard to see how the existing chalet bungalow could be replaced by two houses without detriment to the neighbourhood and to residents.

This application related to the demolition of the existing chalet bungalow and the erection of a pair of semi-detached two storey dwellings and creation of a new access from the highway.

Ms Pride, Planning Officer, presented the report and the application had been recommended for approval by officers.

Mr Jonathan Inman addressed the committee in objection to the application.

Mr Tom Wiffen, the agent, addressed the committee in support of the application.

Cllr Hirst, Ward Councillor, addressed the committee in objection of the application.

Cllr Reed, Ward Councillor, addressed the committee in objection of the application.

Following a full discussion Cllr Sanders **MOVED** and Cllr Bridge **SECONDED** a motion to **REFUSE** the application.

A recorded vote was taken and Members voted as follows:

FOR: Cllrs G Barrett, Bridge, Jakobsson, McCheyne, Morrissey, Nolan, Miss Sanders and Tanner (8)

AGAINST: (0)

ABSTAIN: Cllrs Fryd, Haigh, Laplain and Mynott (4)

Members **RESOLVED** that the application be **REFUSED** due to the bulk, mass, height of the building and its proximity to the boundaries, the proposal would be an overdevelopment of the site and a cramped form of development. This would be out of keeping with the prevailing pattern of development harmful to the visual amenity of the area, in conflict with Local Plan Policy CP1 (i) and (iii).

408. Land adjacent to Walden, Frog Street, Kelvedon Hatch, Brentwood. CM15 0JL - Application No. 19/01605/FUL

The application was referred to committee at the request of Cllr Poppy.

The application related to the construction of a new detached two storey dwelling with vehicular access and parking on land on the southern side of Frog Street, between dwellings named 'Walden' and '1 Laburnum Cottages'.

The site was 13m wide at the building line - though wider at the front and mostly narrower to the rear - which was wider than Braemar and Walden, though narrower than 1 and 2 Laburnum Cottages. The proposed dwelling would be 8.4 m wide, 7.4 deep and 8.46 tall. It would therefore be approximately half a metre taller than Braemar/Walden and the same height as 1 and 2 Laburnum Cottages though the latter had full hipped roofs. The parking would be to the left of the plot adjacent to Walden and the gardens would be to the front and rear.

This application was recommended by officers for refusal.

Mr Ovenden, Associate Consultant Planner, presented the application.

Mr Chris Loon, Agent for the application, addressed the committee in support of the application.

Cllr North, Parish Councillor for Kelvedon Hatch, addressed the committee in support of the application.

Ward Members, Cllr Poppy and Cllr Parker, also addressed the committee supporting the application.

Following further discussion Cllr McCheyne **MOVED** and Cllr Tanner **SECONDED** a motion to **APPROVE** the application.

A recorded vote was taken and Members voted as follows:

FOR: Cllrs Barrett, Bridge, Fryd, Haigh, Jakobsson, Laplain, McCheyne, Mynott, Nolan, Miss Sanders and Tanner (11)

AGAINST: (0)

ABSTAIN: Cllr Morrissey (1)

Members **RESOLVED** that this application be **APPROVED** subject to:

Standard time for commencement, to be carried out in accordance with approved drawings, removal of permitted development extensions and the 6 highways conditions as requested by the highways authority.

409. Land adjacent to 3 King Edward Road, Brentwood. Application No. 19/01649/FUL

The application was reported to the Planning and Licensing Committee as it had been submitted by the Council and related to Council owned land.

The application related to alterations to the design of a pair of semi-detached dwellings permitted in July 2017. The proposal subject to the current application differed from the 2017 scheme as follows:

- Removal of two undercroft parking spaces (one to each dwelling) to become part of the ground floor accommodation of each property
- Use of roof space to provide 'home office' accommodation at second floor level
- Provision of four rooflights to the front and three rooflights to rear elevation
- Gap between proposed building and existing dwelling to east reduced from 1170mm to 1102mm
- Gap between proposed building and existing office to west increased from 1175mm to 1270mm to avoid encroaching on a private right of way

Mr Ovenden, Associate Consultant Planner, presented the application.

The application was recommended for approval by officers subject to certain conditions as outlined in the report.

Cllr Morrissey, Ward Councillor, enquired as to whether additional residents' parking space could be created by moving a post. Officers advised this was a

matter for South Essex Parking Partnership (SEPP) but Cllr Barrett advised that SEPP would not issue residents' permits for new build properties.

Following a full discussion a motion was **MOVED** by Cllr Mynott and **SECONDED** by Cllr Barrett to **REFUSE** the application for alterations to the design.

A recorded vote was taken and Members voted as follows:

FOR: Cllrs Barrett, Bridge, Fryd, Haigh, Jakobsson, Laplain, McCheyne, Morrissey, Mynott, Miss Sanders and Tanner (11)

AGAINST: (0)

ABSTAIN: Cllr Nolan (1)

Members **RESOLVED** that the application be **REFUSED** for the following reasons:

The proposal is unacceptable as it would result in a development that would not make satisfactory car parking arrangements contrary to Policy CP1.

410. Telecommunication Prior Notice Applications

The report sought approval to delegate powers to officers when determining applications for permitted development prior notifications that related to telecommunications development proposals. It was good practice to determine applications in a timely manner. The report aimed to reduce risk by making it less likely that these applications would be determined out of time.

Mr Ovenden, Associate Consultant Planner, presented the report.

Whilst acknowledging the importance of these applications being decided within the given time frame, Members expressed concern that Ward Members would not be given an opportunity to comment, also it was questioned whether by approving the recommendation in the report they were in line with the Council's Constitution.

Following a full discussion the Chair agreed to Cllr Barrett's proposed amendments to the recommendation:

R1. To approve *in principle* that the Development Management Team Leader is delegated powers to determine prior notification applications for telecommunication proposals, *with further consideration for the technical process.*

R2. That this is forwarded to the next meeting of the Constitutional Working Group or Audit and Scrutiny Committee as appropriate for progression.

A motion was **MOVED** by Cllr Sanders and **SECONDED** by Cllr Morrissey to approve the recommendations in the report as amended, a vote was taken by a show of hands and it was **RESOLVED**:

- 1. To approve in principle that the Development Management Team Leader is delegated powers to determine prior notification applications for telecommunication proposals, with further consideration for the technical process.**
- 2. That this is forwarded to the next meeting of the Constitutional Working Group or Audit and Scrutiny Committee as appropriate for progression.**

(Cllr Lapsin declared a non-pecuniary interest by virtue of working for British Telecom).

Reasons for Recommendation

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.

411. Dunton Hills Garden Village Update

The National Planning Policy Framework (NPPF) required local planning authorities to produce a Local Plan for their area. Brentwood Borough Council had submitted the Local Development Plan and the Examination-in-Public was underway.

A key part of the Local Development Plan strategy for growth was to deliver Dunton Hills Garden Village. A draft Framework Masterplan Document had been prepared and presented to the Dunton Hills Garden Village Project Delivery Board and was appended to the report as Appendix A.

The masterplan provided a high-level framework for the site. In order to provide more detail, the Council was preparing a Detailed Design Supplementary Planning Document. Both documents would form part of the policy framework for Dunton Hills Garden Village and had involved engagement with stakeholders throughout.

Members thanked officers for their work.

Following a full discussion Cllr Miss Sanders proposed and Members agreed to **note the update provided in the report.**

Reasons for Recommendation

Delivery of Dunton Hills Garden Village has to date involved two key workstreams; site allocation and planning application. The Council has submitted the Local Plan for Examination in Public with allocation of the garden village a key part of the proposed strategy to meet growth needs consistent with local borough character. CEG has been preparing to submit an outline planning application in support of the proposed allocation. Preparation of the Framework Masterplan Document is a key part of ensuring that any future application is consistent with Local Plan policy and prepared in collaboration with the Council and other stakeholders. Presentation of the masterplan to the Dunton Hills Garden Village Project Delivery Board was a project milestone, which has been brought as information to Planning and Licensing Committee. Next steps are provided as information in order that Members can track progress.

412. Urgent Business

There were no items of urgent business.

The meeting concluded at 21:40

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