



## **Growth and Development Scrutiny Group**

**Wednesday, 20 April 2022**

### **Planning Communications**

## **Report of the Director of Development and Economic Growth**

### **1. Purpose of report**

- 1.1. The planning function is a high-profile service, delivering statutory functions with a high level of public interaction. It is therefore important that the service operates as effectively as possible in discharging this important responsibility. The Borough has seen increased interest from developers in recent years and significant levels of development which will impact a large proportion of residents. Furthermore, there has been a significant increase in applications for extensions and alterations to domestic properties, particularly during the pandemic when households have been responding to the need for additional accommodation, including space to facilitate home working which has become increasingly popular and a requirement for many during the pandemic. The increased levels of development in the Borough have resulted in a corresponding and significant increase in the number of applications submitted to the Council which has resulted in some delays in the determination of applications.
- 1.2. The purpose of this report is to provide the Scrutiny Group with an update on service standards, particularly in response to the increased workload that has been experienced recently, and to respond to various concerns that have been raised regarding some procedural issues, principally in terms of communication and consultations on planning applications.

### **2. Recommendation**

It is RECOMMENDED that the Growth and Development Scrutiny Group:

- a) supports and provides comment on the updated service standards; and
- b) supports the continuation of the current practices for the publicity of and consultations on planning applications.

### **3. Reasons for Recommendation**

- 3.1. The service standards, which will be periodically reviewed, are important to the delivery of an effective and transparent planning service, particularly at a time when the service is experiencing an unprecedented increase in workload. The new service standards have been in place since the end of last year and are now largely embedded.

- 3.2. The Council must satisfy the statutory requirements for the publicity of, and consultations on planning applications as set out on the Town and Country Planning (Development Management Procedure) Order 2015. These requirements are invariably exceeded; however, it is important to acknowledge that the level of any additional publicity should be proportionate to the scale of development and the potential impacts.

#### **4. Supporting Information**

##### **Service Standards and Communication**

- 4.1. Service standards were refined in November 2021. The standards were refined for two related purposes. The first was to take account of the significant mismatch between the capacity of the service and its workload which had become evident earlier in the year. The second was to provide a more structured update for applicants or their appointed agents and councillors during the processing of planning application. The current service standards are available on the Council's website at:  
<https://www.rushcliffe.gov.uk/planningandgrowth/>
- 4.2. There are positive signs that these measures are having a positive impact. The number of time-expired planning applications has steadily decreased. In addition, performance on the processing of planning applications has improved and is well on the way back to the impressive levels which the Council has displayed historically.
- 4.3. The refined arrangements have safeguarded the role of ward members in the planning process. Planning applications continue to be reported to the Planning Committee where there is a difference between the views of the Ward Councillor and the case officer/Principal Officer. Discussions continue to take place between Ward Councillors and case officers to clarify the interpretation of planning policies and/or the weight to be given to material planning considerations. This has been helped by the delivery of training for members in January 2022.
- 4.4. Concern has been expressed that Ward Councillors and Town/Parish Councils/Meetings are not informed when applications are withdrawn, an Enforcement Notice is issued, appeal decisions are received and are not informed about applications for non-material amendments. Following a review of procedures, it has been established that existing practices include notifying Ward Councillors and Town/Parish Councils/Meetings when an application has been withdrawn. Additional procedures have also now been put in place to ensure that notification is also given when an Enforcement Notice is served, and an appeal decision is received. The person or organisation, e.g. Parish Council raising concerns about an alleged breach of planning control will be kept informed of the progress/outcome of investigations by the Enforcement Officer. It may be determined through these investigations that a breach has not occurred, and the case will be closed, and the complainant notified accordingly. There may also be cases

where, whilst a technical breach has occurred, it may be determined that it is not expedient to take formal action, e.g. planning permission might be granted if an application was submitted. Clearly, in these circumstances, it would be in the property owner's interest to seek to regularise the situation through a retrospective application.

- 4.5. With regard to applications for non-material amendments (NMA), until relatively recently there was no formal process to agree changes to a development once the planning permission had been granted. The Government introduced changes to legislation and a process for agreeing changes to development after permission had been granted, including relatively minor changes under an application for an NMA. There is no definition in the legislation of what may be deemed an NMA and the extent of any changes that may be agreed under this process will, to some extent, be dependent on the scale of the development involved. The need for changes after an application has been approved may arise for a number of reasons, including but not limited to the need to make alterations to the scheme to comply with Building Regulations. Using a householder extension as an example, an NMA might involve a slight reduction in the size of the extension or the repositioning or change in the size of a window. Fundamentally, if the changes significantly alter the appearance of the development, result in a different development or an increase in impacts on neighbouring properties, the changes would not normally be agreed as an NMA.
- 4.6. Under the provisions of the legislation, applications for an NMA should be dealt with in 28 days and there is no requirement to undertake any publicity or consultations in relation to these submissions. However, procedures have been put in place to ensure that Ward Councillors and Town/Parish Councils/Meetings are notified of any decisions on an NMA. If the changes are not agreed as an NMA, the applicant has the option to submit a further planning application which would be subject to the normal publicity/consultation procedures.

### **Application of Planning Policy**

- 4.7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that; *“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”* In the case of Rushcliffe, the development plan comprises the Local Plan Part 1: Core Strategy, the Local Plan Part 2: Land and Planning Policies and any Neighbourhood Plan which has been formerly adopted for the area where the application site is situated. The National Planning Policy Framework sets out government planning policy and would be a material planning consideration. Other material considerations include, but are not limited to, responses from technical and other consultees and comments from third parties/local residents.
- 4.8. Therefore, in accordance with Section 38(6), the starting point for any consideration or decision on a planning application is the development plan.

This is reinforced by guidance contained in the National Planning Practice Guidance which advises that *“The development plan is at the heart of the planning system with a requirement set in law that planning decisions must be taken in line with the development plan unless material considerations indicate otherwise.”* However, planning policies are not generally intended to be prescriptive and will be open to interpretation, particularly for example those that relate to issues such as design or are criterion-based policies. The consideration of a planning application will therefore involve the application of the planning balance where the requirements of the policies are considered against other material planning considerations. Therefore, it will be for the case officer in considering the proposal and ultimately the decision maker, whether determination is made under delegated powers or by the Planning Committee, to interpret the policies and attach appropriate weight to the material considerations in arriving at a recommendation or decision.

- 4.9. The decision-making process which operates at Rushcliffe means that no single person can unilaterally consider a development proposal and determine the application. Applications determined under delegated powers are referred to a more senior officer to reach a decision and others are determined by the Planning Committee. Through the processes that are in place, there are stages where a case officer’s interpretation of policy and recommendation are scrutinised and, where necessary, challenged.

## **Consultation Process**

- 4.10. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the Order) sets out the statutory requirements for the publicity of and consultations on planning applications. For the majority of planning applications, the Order requires that the application is publicised by the display of a site notice on or near the site to which the application relates OR by giving notice to any adjoining owner or occupier. An adjoining owner or occupier is defined in the Order as any owner or occupier of land adjoining the application site, i.e. land which shares a boundary with the site. For certain types of application, including major developments, applications accompanied by an Environmental Statement (as required by the Environmental Impact Assessment Regulations) or proposals that are a departure from the development plan, the Order specifies that the application must be publicised by the display of a site notice and by notice in a newspaper circulating in the area. Separate regulations relating to Conservation Areas and Listed Buildings also require that any application for development within a Conservation Area or for work to, or which may affect the setting of a Listed Building, must also be publicised by the display of a site notice, and notice in the newspaper. Details on how we will publicise planning applications is also provided in the Statement of Community Involvement available on the Council’s website at:  
<https://www.rushcliffe.gov.uk/planningpolicy/localplan/communityinvolvement/>
- 4.11. Where an application is publicised by the display of a site notice, the decision notice will include a note to the applicant advising that; *“Any site notice displayed for the purpose of this application may be removed following the*

*issuing of this decision. If the site notice is still on display, this should be removed by the applicant. The location of any notices displayed can be viewed on the Council's website at <http://planningon-line.rushcliffe.gov.uk>.”*

This note is intended to ensure that site notices are removed when they no longer serve any purpose. However, the service does not have the resources to go back to site and ensure that the notice(s) have been removed, although officers may remove redundant notices when they are observed.

- 4.12. For certain types of planning submission, there is no legal requirement to publicise the application. This includes, but is not limited to, applications for a certificate of lawful use or development, applications to discharge conditions of a planning permission and applications seeking a non-material amendment.
- 4.13. The publicity/consultation will provide details of how people can comment on a planning application and the date by which comments should be submitted, usually not less than 21 days. Relatively recent changes to the legislation require that where the consultation period includes a bank holiday, an extra day must be added for each bank holiday. The Order also specifies which statutory consultees must be consulted depending on the nature and location of the proposal. Where consultations are undertaken with statutory consultees, the legislation specifies that the application must not be determined until a period of not less than 21 days has expired from the date of the consultation. Given the various ways that a planning application may be publicised, it is not uncommon for different dates for the submission of comments to be specified, e.g. in letters and on site notices, and the later of the dates will be honoured.
- 4.14. Comments may be accepted and taken into account after the consultation period has expired, but to ensure that comments are taken into account it is always advisable for them to be submitted in a timely fashion, and ideally within the consultation period. If further information or revised plans are submitted, the application may be subject to further publicity/consultations. Comments on planning applications must be made in writing and can be submitted in a number of ways including directly via the Council's website using the Planning Online page, by email or hard copy by post. The preferred way to submit comments is via the website. Whilst the Council is required to keep a register and make details of all applications publicly available, typically on their website, there is no legal requirement to display comments from third parties/members of the public. However, at Rushcliffe the decision was taken to display all representations on the website in the interest of openness and transparency. Similarly, there is no requirement to display any correspondence between the case officer and the applicant or their agent/architect, although the file can be made available for public inspection on request.
- 4.15. In order to ensure compliance with the General Data Protection Regulations, all representations, regardless of how they are submitted, must be checked and any personal or sensitive information redacted before they are displayed on the website. Until relatively recently this task was undertaken by the planning officers, which unfortunately resulted in some delays in comments

appearing on the website, due to heavy workloads as a result of the increase in applications. The process was therefore reviewed and the responsibility for checking comments and releasing them to the website has now been reassigned to staff within the Business Support Unit. This has resulted in representations being checked and appearing on the website much quicker. This also relieves the planning officers of this task and enables them to focus on the consideration of applications.

- 4.16. Once a planning application has been publicised in accordance with the requirements of the legislation, there is no statutory requirement to undertake further publicity or consultations on the application. During the consideration of an application there may be additional/updated information or revised plans submitted. In these circumstances, further publicity/consultation will be at the discretion of officers. Where changes are relatively minor, e.g. the omission of a window, changes which may have a reduced impact or address concerns raised in representations, further publicity/consultation may not be deemed necessary. Where more substantial changes are made to an application or significant additional information is submitted, further publicity/consultation is likely to be undertaken, although the period for submission of comments may be shorter, e.g. 10/14 days rather than the original 21 days.
- 4.17. Where, in accordance with the Scheme of Delegation, an application may be scheduled for consideration by the Planning Committee, for example where a Ward Councillor may have objected to the proposal and officers are minded to recommend approval, and the scheme has been revised or additional information submitted, the Service Manager or one of the Principal Planning Officers may approach the Ward Councillor to discuss whether the changes to the scheme or additional information has addressed their concerns. This may avoid the need for the application to be considered by the Planning Committee and instead determined under delegated powers. In order for any comments to be taken into account, they must be based on material planning considerations.
- 4.18. Whilst the legislation only requires written notification to be sent to the owner or occupier of the land adjoining the application site, the Council's own internal procedures invariably mean that the level of publicity goes above and beyond the minimum statutory requirements. For example, if the proposed development may be visible in the street scene, for example a new house or extension to the side or front of an existing property, letters will be sent to properties on the opposite side of the road. Furthermore, if it is considered that the development may have a wider impact, additional properties may be consulted, for example where a proposal involves a livestock building, properties within 400 metres of the site would normally be consulted.
- 4.19. Concern has been raised that there may have been delays in residents receiving consultation letters with no extension to the consultation period. As previously stated, whilst the consultation period would not normally be extended, comments on a live application received after the date specified in consultation letters may still be accepted and taken into account. The Council has been using a hybrid mail solution to send certain correspondence,

including neighbour notification letters on planning applications. This means that the letters are not despatched from the Arena offices; they are sent by a company on behalf of the Council. Unfortunately, it has been identified that there have been some delays in letters being despatched by this means and the arrangement has been the subject of a review and changes have been introduced to address the situation. The new arrangements would mean that any letters sent to the new provider before noon would be printed and sent to the Royal Mail on the same day. Letters received by the provider after noon would be printed and sent the following working day. We are confident that this change will address any delays that have occurred. All letters are sent in envelopes bearing the official council logo and the words Rushcliffe Borough Council and return address. This should hopefully avoid recipients treating them as a circular or junk mail.

### **Other Procedural Matters**

- 4.20. There are statutory timescales for the determination of planning applications and the Government measures the performance of Local Planning Authorities in terms of speed of determination. The statutory timescale for the determination of most planning applications, including householder development, minor housing developments (less than ten units) and minor commercial development (less than 1000sqm) is eight weeks. Planning applications involving major development, including housing schemes involving more than 10 units, sites of more than half a hectare and commercial floorspace exceeding 1000sqm should be determined in 13 weeks. Applications accompanied by an Environmental Statement, under the Environmental Impact Assessment Regulations, should be determined within 16 weeks. There is provision to extend these periods with the agreement of the applicant. However, if an applicant does not agree to an extension of time and the consideration of the application has gone beyond the statutory period, they have a right of appeal to the Planning inspectorate on grounds of non-determination. Furthermore, where authorities fail to determine a certain percentage of applications within the statutory timescales or an agreed extension of time, the Government can place the authority in Special Measures, which means that the determination of applications may be taken out of the hands of the authority.
- 4.21. Section 101 of the Local Government Act 1972 allows the local planning authority to arrange for the discharge of any of its functions by a committee, sub-committee, or an officer or by any other local authority. In order to facilitate the timely determination of planning applications, the Government has encouraged Local Authorities to develop effective schemes for applications to be determined under delegated powers. This is highlighted in the National Planning Practice Guidance which advises; *“The exercise of the power to delegate planning functions is generally a matter for individual local planning authorities, having regard to practical considerations including the need for efficient decision-taking and local transparency. It is in the public interest for the local planning authority to have effective delegation arrangements in place to ensure that decisions on planning applications that raise no significant planning issues are made quickly and that resources are*

*appropriately concentrated on the applications of greatest significance to the local area.”*

- 4.22. The percentage of applications determined under delegated powers at Rushcliffe is typically around 94%. Having regard to this level of delegation and the Government advice, the default setting for the decision level on all applications is that they will be determined under delegated powers. However, this should not be interpreted as a favourable outcome or pre-determination of the application, proposals may either be approved or refused under delegated powers. Furthermore, the default setting does not preclude an application subsequently being determined by the Planning Committee and all applications will be determined in accordance with the Council's scheme of delegation which is set out in the Council's Constitution.

### **Conservation Areas**

- 4.23. Concern has been expressed that Conservation Areas are ignored or the potential harm to the area is not communicated. Conservation Areas are the subject of a separate report to Scrutiny, and it is not therefore intended to address this matter in any detail in this report. However, it is important to acknowledge that Conservation Area designation does not preclude development taking place within the designated area and applications must be carefully considered having regard to the character and appearance of the area. In this respect, Section 72 of the Planning (listed Buildings and Conservation Areas) Act 1990 places a statutory duty on Local Planning Authorities to give special attention to the 'desirability of preserving or enhancing the character or appearance of that area.' This is a duty which officers take seriously when considering applications for development within a Conservation Area.
- 4.24. When assessing an application for development in a Conservation Area, it may be deemed that the development has no harm, less than substantial harm or substantial harm. Where harm is identified the appropriate policy tests set out in the NPPF will be applied and permission will not be granted unless public benefits outweigh any identified harm. Identifying the harm and whether this is outweighed by any public benefits is a matter of judgement by officers and any harm arising should be detailed in the Conservation Officers comments or the case officers report, which are both available for public inspection on the Council's website.

### **5. Risks and Uncertainties**

The number of planning submissions received by the Council each year is unknown and as has occurred recently, the workload can increase significantly, resulting in a mismatch between capacity and workload. This can have implications for the timescales for the determination of applications and cost of delivering the service. The Service Standards may need to be reviewed in response to changing workloads to ensure that they are achievable in the interest of delivering an effective service.



## **6. Implications**

### **6.1. Financial Implications**

There are potentially significant costs and resources associated with the publicity of planning applications. The cost of displaying notices in the local press is typically in the region of £60,000 each year. In the past year, the number of neighbour notification letters sent was in the region of 5000. In addition, there are also costs associated with the production and displaying of site notices. Any additional consultations over and above the current practices, which generally already exceed the statutory requirements, would incur additional costs.

### **6.2. Legal Implications**

6.2.1. The Borough Council as Local Planning Authority must satisfy the statutory minimum requirements when publicising and consulting on planning applications. Any publicity or consultations beyond the statutory minimum requirements is at the discretion of the Council but should be proportionate to the scale of development and likely resulting impacts.

6.2.2. The Borough Council must also have procedures in place that allow the determination of applications in a way that supports the application of the principles of natural justice and operates so as not to fetter its discretion.

### **6.3. Equalities Implications**

The Council is committed to delivering all activities in accordance with its Equality and Diversity Policy and will embed the principles of that policy in its approach to regulatory functions. The statutory processes regarding the determination of planning applications relate to land and property and personal circumstances will rarely be a material consideration. Therefore, the Council will treat all people equally and fairly. However, there may be some instances where proposed development will benefit or may impact a person or persons with disabilities and, where this is known, this should be appropriately acknowledged in any delegated decision or committee report.

### **6.4. Section 17 of the Crime and Disorder Act 1998 Implications**

There are no crime and disorder implications associated with the consideration of this report and its recommendations.

## 7. Link to Corporate Priorities

Quality of Life	All development will have some impact which may potentially adversely affect the amenities and quality of life of residents. Careful consideration is given to the potential impacts arising from development and it is important that residents have adequate opportunities to engage with the service and comment on development proposals that may affect them.
Efficient Services	The delivery of an efficient and effective planning service is consistent with the Council's corporate priority to transform the Council to enable the delivery of efficient high-quality services.
Sustainable Growth	The purpose of the planning system is to contribute to the achievement of sustainable growth. One of the three overarching objectives to sustainable development is the environmental objective. Development should contribute to protecting and enhancing the natural, built, and historic environment. In addition, another of the objectives is the economic objective. Sustainable development can contribute to the economy of the Borough. The delivery of an effective and efficient service is key to the timely delivery of sustainable development.
The Environment	The impact on the environment is an important consideration when determining planning applications and careful consideration needs to be given to the potential impacts arising from development to ensure that it can be delivered in a sustainable manner. Environmental impacts can be mitigated through the use of conditions and appropriate developer contributions.

## 8. Recommendation

It is RECOMMENDED that the Growth and Development Scrutiny Group:

- a) supports and provides comment on the updated service standards; and
- b) supports the continuation of the current practices for the publicity of and consultations on planning applications.

<b>For more information contact:</b>	Leanne Ashmore Director of Development and Economic Growth  LAshmore@rushcliffe.gov.uk,
<b>Background papers available for Inspection:</b>	None.
<b>List of appendices:</b>	None.