

COUNCIL

24 FEBRUARY 2022

PLANNING APPLICATIONS – REVIEW OF THE DEADLINE FOR THE RECEIPT OF REPRESENTATIONS

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Summary

This report sets out a review of the current arrangements and sets out proposals for changing the deadline for the submission of representations in respect of planning applications prior to meetings of the Planning Committee.

This report has been considered, initially, by the Planning Committee on 12 January 2022.

1. Budget and policy framework

- 1.1. The deadline for the receipt of representations in respect of planning applications is set out in the Planning Code of Good Practice, which forms part of the Council's Constitution (part 2 of chapter 5 refers).
- 1.2. Any change to the Code will be a matter for Full Council in accordance with paragraph 14.3 (Changes to the Constitution) of Article 14 of the Constitution.

2. Background

- 2.1. There is a requirement to consult on planning applications which is set out in Regulation 15 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). The required period for public consultation is only 21 days. Most planning applications are not placed on the agenda until after this time has passed.
- 2.2. There is no deadline within the legislation which relates specifically to submission of representations to the Planning Committee. However, one of the public law grounds for Judicial Review is that the committee did not take into account relevant information which could be included within a

representation, therefore, it is important that the cut off time provides sufficient time for the committee to fully consider any representations.

- 2.3. At Medway, the deadline for the receipt of representations is specified in paragraph 5.2 of the Planning Code of Good Practice:
 - 2.3.1. “The Planning Committee has agreed that where the statutory consultation period for a planning application has expired prior to the date of the Committee at which the application is to be considered, no representations shall be accepted for consideration by the Committee unless they are received within the Planning Service before 12 noon on the day before the date of the Committee at which the application is to be considered”.
- 2.4. Before each meeting of the Planning Committee, a Supplementary Agenda Advice Sheet is published. This will set out details of any representations received between the publication of the main agenda and the deadline for the receipt of representations (which will be noon on Tuesday, if the committee meeting is held on Wednesday evening). In practice, the Supplementary Agenda Advice sheet is published on the afternoon of the day of the meeting. This is because officers need to have sufficient time to collate and respond to the representations which have been received, particularly when representations are received on or close to the deadline. On some occasions, the representations received may lead to officers needing to revise their advice to the Committee as well as amending recommendations/conditions.
- 2.5. Whilst the number of representations as well as the complexity of the representations is variable depending on the nature of each planning application, there is an increasing trend for some representations, of a substantive nature, to be submitted to the Council on or close to the deadline and this is now placing unnecessary pressure on both officers and Members to take these representations into account when considering and determining planning applications.
- 2.6. Therefore, following informal consultation with the Chairman, Vice-Chairman and Opposition Spokesperson, the Committee is asked to review the current position and to consider proposals to change the deadline.

3. Options

- 3.1. Option 1 – retain the existing arrangements for the receipt of representations, as specified in paragraph 2.2.1 of the report, namely that where the statutory consultation period for a planning application has expired prior to the date of the Committee at which the application is to be considered, no representations shall be accepted for consideration by the Committee unless they are received within the Planning Service before 12 noon on the day before the date of the Committee at which the application is to be considered.
- 3.2. Option 2 – change the existing arrangements for the receipt of representations to the statutory consultation period deadline. This means any representation from anyone (statutory or other) received outside of that consultation period

would not be able to be taken into consideration in the determination of that application.

3.3. Option 3 – change the existing arrangements for the receipt of representations, namely that where the statutory consultation period for a planning application has already expired, no representations shall be accepted for consideration by the Committee unless they are received within the Planning Service before 12 noon 4 clear working days before the date of the Committee at which the application is to be considered. For example, for this meeting of the Planning Committee (Wednesday 12 January), the deadline for the receipt of representations would be 12 noon, Wednesday 5 January. This would mean that no further representations would be accepted beyond this point (where the statutory consultation period has already expired).

3.4. Option 3 is the recommended option for reasons set out in section 4 below.

4. Advice and analysis

4.1. Option 1 – some of the concerns with retaining the existing arrangements are covered in paragraphs 2.3 and 2.4 of the report. Recently, there has been an increase in the number and complexity of representations being submitted to the Council on or close to the deadline. Firstly, this leaves officers with very little time to collate and respond to the representations before publishing the Supplementary Agenda Advice Sheet and secondly, this information is provided to Committee members very close to the start of the meeting, meaning there is not very much time for the representations together with any officer responses and changes to recommendations/conditions to be read and fully understood which can place Committee members under pressure. This is currently mitigated by Planning officers thoroughly detailing the information in the Supplementary Agenda Advice Sheet at the meeting and in presenting reports. This can add a significant amount of time to these presentations. Therefore, it is not recommended that the existing arrangements are retained.

4.2. Option 2 – the option to change the existing arrangements for the receipt of representations to the statutory deadline would mean that in almost all cases there will no longer be a requirement for there to be a Supplementary Agenda Advice Sheet because planning applications are rarely, if ever, placed on an agenda prior to the statutory deadline. However, this would be a significant change as Medway has always accepted representations up to the day of determination for delegated applications and noon the day before committee for Committee. This option would likely result in the Council not being able to consider important representations submitted even just a few days outside the consultation period which could have implications for the full and proper consideration of that application. The consequences of that is the increased likelihood of successful challenges to decisions.

4.3. Option 3 – the option to change the existing arrangements as outlined in paragraph 3.3 above would provide, in almost all circumstances, a clear deadline regarding representations unless the statutory consultation period for

a planning application has not already expired. This would allow officers to produce a Supplementary Agenda Advice Sheet and publish it 2 clear working days before the meeting. Using the example in paragraph 3.3 above, this would mean that the Supplementary Agenda Advice Sheet would be published on Friday 7 January, i.e. Committee members would have it for the weekend before the meeting. This is the recommended option as it represents a proportionate response to the increasing pressures on both officers and Members. The proposed changes are set out as tracked changes in Appendix 1.

5. Risk Management

- 5.1. Committee members must be provided with the Supplementary Agenda Advice Sheet in a timely fashion to allow them to have sufficient time to take account of the information contained therein. This is currently supported by Planning officers who ensure that they cover all aspects of the issues set out in the Supplementary Agenda Advice Sheet to ensure that decision making is not compromised. Nevertheless, it is considered much more preferable that Committee members are given more time to read and take into account what is often detailed information contained with the Supplementary Agenda Advice Sheet.

6. Consultation

- 6.1. Informal consultation on the proposals in this report was undertaken with the Chairman, Vice Chairman and Opposition Spokesperson of the Committee prior to consideration by the Planning Committee on 12 January 2022 (see below).

7. Planning Committee – 12 January 2022

- 7.1. The Committee received a report setting out a review of the current arrangements for the deadline for the receipt of representations on planning applications and setting out proposals for changing the deadline prior to meetings of the Planning Committee.
- 7.2. The Head of Planning explained the rationale for the review and outlined the options available.
- 7.3. The Committee discussed the report and the preferred option was option 3 - to change the existing arrangements for the receipt of representations so that where the statutory consultation period for a planning application had already expired, no representations would be accepted for consideration by the Committee unless they had been received within the Planning Service before 12 noon, 4 clear working days before the date of the Committee at which the application was to be considered. This would mean that no further representations would be accepted beyond this point (where the statutory consultation had already expired).

- 7.4. In selecting this option, the Committee was mindful of the current procedure which had operated for a number of years, but noted that in recent months, the level and complexity of representations received close to the current cut off time i.e. the day before the Committee, was placing considerable pressure on officers to read the representations and prepare a response for inclusion on the supplementary agenda advice sheet which in turn puts unacceptable pressure on members to read and digest significant information in an unacceptably short period before the Committee. This pressure would be alleviated with the revised cut of time and would also allow the supplementary agenda advice sheet to be circulated to Members well in advance of the date of the committee meeting.
- 7.5. The Committee noted that to change the cut-off date for receipt of representations would constitute a change to the Planning Code of Good Practice and would therefore require a recommendation to Full Council on 24 February 2022. During discussion, it was suggested that prior to recommending this to Council, officers review the wording to ensure that the reference to '4 clear working days' could be easily understood by the public and that it be made clear that a Bank Holiday is not included as a working day.
- 7.6. It was also suggested that the Head of Planning review the wording of the statutory timescales as they are listed on the Planning Website.
- 7.7. The Committee:
- a) agreed to recommend to Full Council on 24 February 2022 to approve the changes to the Planning Code of Good Practice as set out in Appendix 1 to the report with such changes to take effect starting with the Planning Committee scheduled to take place on 6 April 2022.
 - b) requested that prior to recommending a) above to Full Council, officers review the wording to ensure that the reference to '4 clear working days' can be easily understood by the public and that it be made clear that a Bank Holiday is not included as a working day.
 - c) noted that the Head of Planning had agreed to review the wording of the statutory timescales as they are listed on the Planning Website.

8. Director's comments

- 8.1. The Planning Committee, in agreeing to recommend to Council approval of the changes to the Planning Code of Good Practice as set out in Appendix 1 to the report, made some helpful comments, which are addressed below.
- 8.2. With regards to the issue of Bank Holidays, this is addressed in the proposed changes set out in paragraph 5.2 of Appendix 1 to the report. This confirms that Bank Holidays (and indeed the ex-gratia day which applies during the Christmas break each year) will not apply for the purposes of calculating the number of clear working days.

8.3. The Head of Planning has reviewed the wording of the Planning website, which currently only makes reference to the statutory deadline for response – i.e 21 days for the public in most cases and subject to Council approval of the changes, will ensure that the necessary changes to the website to make clear on deadlines for representations to be received on applications referred to Committee are implemented within 14 days of Full Council.

9. Financial implications

9.1. There are no direct financial implications arising from these proposals.

10. Legal implications

10.1. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) sets out the statutory period for consultation. To determine applications within that statutory period would make the decision open to challenge. To allow representations to be received and considered outside of that statutory period is a matter for each individual Council in accordance with their own code.

10.2. Any change to the Planning Code of Good Practice will be a matter for Full Council in accordance with paragraph 14.3 (Changes to the Constitution) of Article 14 of the Constitution.

11. Recommendation

11.1. The Council is recommended to approve the changes to the Planning Code of Good Practice, as set out in Appendix 1 to the report, with these changes to take effect starting with the Planning Committee scheduled to take place on 6 April 2022.

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Appendices:

Appendix 1 – Planning Code of Good Practice

Background papers:

None