

Development Control A Committee

18th October 2017



Report of: Head of Development Management

Title: Review of Planning Application Requirements Local List

Ward: Citywide

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Recommendation

That the Committee endorses the adoption of the revised Planning Application Requirements List including the Drawings Standards document.

Summary

The Planning Application Requirements Local List sets out the information requirements for different types of applications. If an application does not meet the requirements then it is not registered and the statutory period to determine the application does not begin. The Local List has to be reviewed every two years.

The significant issues in the report are:

A key issue with this review is that it provides an opportunity to tighten up the Council's approach to the receipt and publication of developers' viability appraisals. Adoption of the revised Local List will require major planning applications to be accompanied by viability appraisals from the outset and that this information is made publically available.



Policy

1. Whilst the proposed changes to the Local List don't change Council policy, they will improve how the Council applies Policy BCS17 (Affordable Housing) of the Bristol Local Plan Core Strategy.

Consultation

2. Internal

A briefing paper on this subject was presented to the Cabinet Members for Place and Housing in March 2017. Since then Legal service have advised that this is a non-executive matter and should be decided by the Development Control Committees.

3. External

A six week consultation exercise was undertaken during August and September 2017. The principles behind the proposed changes were also discussed at customer engagement forums, namely the Planning User Group and the Bristol Property Agents Association. Only one response was received during the consultation period which queried the principle of there being a local list, instead saying that there just be one national list that all local planning authorities followed.

Context

4. The Planning Application Requirements Local List allows the local planning authority to set information requirements for specific types of applications. This arrangement was introduced by Central Government around 10 years ago in the interests of applications being determined swiftly (as they would be accompanied by the correct supporting information) and that interested parties would have access to the supporting information from the outset so they could take this into account when making their comments. If an application does not meet the Local List requirements, it is not registered and the period for determining the application does not begin. It is however, a statutory requirements that the Local List is subject to public consultation and that it is reviewed every two years.
5. Whilst all aspects of the Local List have been reviewed, key issues that are dealt with during this review are:
 - Timing of receipt and publication of viability information
 - Information on broadband coverage
 - Drawings standards
6. The level of affordable housing being offered and achieved as part of major planning applications has come under increasing scrutiny over recent months. This has manifested itself in a number of ways:
 - A number of high profile major planning applications have been very carefully scrutinised and, in the case of the Elizabeth Shaw chocolate factory, deferred due to doubts over the developers' ability to provide affordable housing.

- High profile applications have received increasing numbers of representations on the issue of affordable housing from local residents and also organisations such as Acorn
 - The Council has received increasing numbers of requests under Freedom of Information for disclosure of developers' viability submissions
 - There has been increasing media interest in the delivery of affordable housing
7. Whilst the constraints provided by Central Government policies are largely understood by members (through briefing sessions held in Summer 2016 and case-specific advice), and the planning authority's approach to viability testing is considered to be as robust as possible, there are some improvements that could be made that would improve the transparency and effectiveness of the process.
8. In recent times there have been two key events that should influence the Council's approach to this issue going forward:
- The First Tier Tribunal judgement in the case of *Clyne v the Information Commissioner & the London Borough of Lambeth* (June 2016), which signals greater disclosure of viability information
 - Full Council motion and debate on affordable housing strategy on 13th December 2016 where the following (amongst other things) was resolved: In the case of schemes which do not comply with the Council's guidance on affordable homes; to instruct planning officers to make all information used in the viability process, whether it arises from a council appointed surveyor or a third party, available publicly in good time before a planning application is to be considered.
9. One of the current Local List requirements for major applications (>10 residential units) is for an "Affordable Housing Statement" which is defined as needing to set out the following:
- the numbers of residential units;
 - the mix of units, with numbers of habitable rooms and/or bedrooms, or the floor space of habitable areas of residential units;
 - plans showing the location of units and their number of habitable rooms and/or bedrooms, and/or the floor space of the units;
 - if different levels or types of affordability or tenure are proposed for different units this should be clearly and fully explained;
 - design quality standards based on the HCA's technical requirements.

The main weakness of this approach is that it doesn't require the submission of viability information that justifies the affordable housing proportion that is being offered. This information is usually requested by officers once the application has been received and consulted on, meaning that it is normally received and assessment starts partway through the life of the planning application. A major drawback of this is that consultees and interested parties become aggrieved that the offer of affordable housing is either unclear or unsubstantiated. As a result, officers often feel on the "back foot" in negotiating affordable housing and managing the responses of interested parties. Whilst this doesn't ultimately

prejudice the Council's negotiating position, being in reactive mode takes up more officer time. There is also an opportunity to more rigorously enforce the requirement for Affordable Housing Statements to set out the required details of the proposed affordable housing offer.

- 10.** Officers have reviewed the requirements of Affordable Housing Statements to ensure that in future they clearly set out what the affordable housing offer is. An additional requirement is that the statement is accompanied by a full viability appraisal of the submitted scheme. This requirement would be rigorously enforced, meaning that major planning applications that were not accompanied by the necessary information would not be made valid and would not start progressing through the system until this information was provided. This would put the Council on the "front foot" in future negotiations and would enable interested parties to see what the affordable housing offer is from day one and to respond accordingly.
- 11.** Council officers have full access to the developers' viability appraisal once submitted and this is shared with the appointed consultant advising the Council on this matter. The Consultant's advice is then typically made available to members of the relevant DC Committee and is published on the Council's website as one of the planning application documents. The developers' viability information is not circulated or published on the BCC website because the request from the developer is normally that the document is to be treated as confidential information. The lack of access to the submitted viability information is clearly causing understandable frustration to interested parties and members of the DC Committees.
- 12.** Over the last 12 months we have seen an increase in Freedom of Information requests for the submitted viability reports and, whilst there is usually resistance from the developers when this is requested, the Council is normally releasing this information. This approach has disadvantages though because servicing the requests is taking up officer time and also leaves Members and interested parties feeling as if they have had to extract the information from the Council.
- 13.** The resolution passed by Full Council on 13th December, which followed a full debate, provides a clear steer on this issue from an elected member perspective. In addition to this our reading of the *Clyne* judgement is that viability information from developers should be placed in the public domain without delay, unless there is a genuinely commercially sensitive issue (such as a rent free period offer) which would then lead to just that information being redacted. So, we have both a political steer and a legal steer on this issue.
- 14.** The proposal therefore is that, through the revisions to the Local List, it is made clear that the viability information required to make applications valid will also be published on the Council's planning website, without redaction, along with all of the other supporting documents at the start of the application process. This approach will ensure that all interested parties will have access to the same information as Council officers and their appointed consultants.
- 15.** In support of Policy BCS15 (Sustainable design and construction) of the Bristol Local Plan Core Strategy, the Local List will now also require major applications to be accompanied by a Broadband Connectivity Assessment. This will raise the profile of this issue and encourage developers to think about facilitating high speed broadband in their developments.

- 16.** Finally, some of the West of England authorities have been working together on consistent standards that should be met by drawings submitted as part of applications. The revision to the Local List allows the Council to formally adopt these standards and implement them. This will improve the quality of submissions to the benefit of all interested parties.

Proposal

- 17.** That the revised Local List is adopted, incorporating new requirements relating to Affordable Housing Statements, Broadband Connectivity Assessments and the Drawings Standards document. The revised Local List would come into effect from 1st December 2017 and would need to be reviewed again before 1st December 2019.

Other Options Considered

- 18.** The Local List has to be reviewed at this point in time. Not amending the Affordable Housing Statement changes would be to fail to adequately respond to the motion passed by Full Council in December 2016.

Risk Assessment

- 19.** The principle of making viability reports public has been tested at customer engagement forums without adverse reaction. Also, when these reports have been made public against the wishes of developers, legal action has not followed. Not making these changes to the Local List would impair the Council's effectiveness in negotiating affordable housing in an open and transparent way.

Public Sector Equality Duties

- 20a)** Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.

20b) None of the changes proposed to the Local List have a prejudicial impact on any groups of protected characteristics. Improving the quality and accessibility of information at the outset of the planning application process is likely to be beneficial to all stakeholders.

Legal and Resource Implications

Legal

The Council's Head of Legal Services and Monitoring Officer reviewed this proposal earlier this year and advised that it was a non-executive matter, and therefore should be decided by the Development Control Committees.

Financial

(a) Revenue

N/A

(b) Capital

N/A

Land

N/A

Personnel

N/A

Appendices:

A: Revised Planning Application Requirements Local List

B: Drawings Standards Document

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

Link to Clyne

judgement: <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1808/Clyne,Jermev%20EA-2016-0012%20AMENDED%2023-06-16.pdf>

Link to minutes of Full Council meeting 13th December 2016 (from pg10):

<https://democracy.bristol.gov.uk/documents/g256/Printed%20minutes%2013th-Dec-2016%2014.00%20Full%20Council.pdf?T=1>