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## **Late Item for 10<sup>th</sup> June 2010 Plans Panel East**

Agenda Item 11 – Appeals against non determination

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Originator: M Sellens

Tel: 0113 2478172

## Report of the Chief Planning Officer

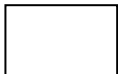
### **PLANS PANEL EAST**

Date: 10<sup>th</sup> June 2010

Subject: Appeals against non determination

#### **Electoral Wards Affected:**

All



Ward Members consulted  
(referred to in report)

#### **Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

#### **RECOMMENDATION:**

Members are requested to note this report

### **1.0 Introduction:**

- 1.1 Councillor Gruen has previously raised the issue of situations where the Plans Panel had resolved to not accept an officers recommendation to approve an application and where, before reasons for refusal could be agreed by the Panel, an appeal against non determination had been lodged by the applicants. It was agreed by the Head of Planning Services at the last Panel on 13<sup>th</sup> May that a report would be brought back to the next meeting dealing with the issues involved. It is understood that the central concern of Members is that the practice of deferring consideration of an application to bring back reasons does not disadvantage the Council in any subsequent appeal proceedings.

### **2.0 Present practice:**

- 2.1 Present practice on this issue is set out in The Code of Practice for the Determination of Planning Matters ( 'the Planning Code' ). Section 15 of the Planning Code deals with the meetings of the Plans Panels and in sections 15.4 to 15.6 sets out the relevant advice on this matter which is reproduced below:

- 2.2 “ 15.4 When a planning application has been deferred following a resolution not to accept the Chief Planning Officer’s recommendation to grant the application, the Chair shall put to the meeting the proposed statement of the reasons for proposing refusal which, when agreed by the Panel, will be formally recorded in the minutes.
- 15.5 When a planning application has been deferred following a resolution referred to in paragraph 15.4 above, then at the subsequent meeting the Chief Planning Officer shall have the opportunity to respond both in a further written report and orally to the tentative reasons formulated by the Panel for refusing permission. If the Plans Panel is still of the same view, then it shall again consider its reasons for refusing permission, and a summary of the planning reasons shall then be formally recorded in the minutes of the meeting.
- 15.6 If the Plans Panel makes a decision contrary to the Chief Planning Officer’s recommendation, the officer should be given an opportunity to explain the implications of the contrary decision. The Courts have expressed the view that reasons for the contrary decision should be clear and convincing. “
- 2.3 The Planning Code follows the Model Code produced by the Association of Council Solicitors and Secretaries following consultation with the Audit Commission, the Local Government Ombudsman and the Standards Board for England. It has been updated and reflects present guidance in the LGA Probity in Planning document of May 2009. The updated Planning Code was reported to members at the Joint Plans Panel meeting on 19<sup>th</sup> October 2009 prior to consideration by Standards Committee in December 2009.
- 2.4 The normal practice employed where Members have resolved to not accept an officers recommendation to approve has been to ask Members the reasons for possible refusal and then to defer the application and ask officers to bring back detailed reasons at the next meeting. Occasionally, where the reasons are clear at the meeting and officers are content with them Members have been requested to defer and delegate refusal to the Chief Planning Officer for the stated reasons so that the delay involved with waiting to the next meeting is avoided.

### **3.0 Outcomes**

- 3.1 Overall in 2009/10 there were 17 applications where Members at East Plans Panel resolved to not accept the officers recommendation – 12 of these were for refusal and 5 for approval. The 12 refusals resolutions related to 10 schemes ( 2 were Conservation area applications) and of these only 2 have resulted in appeals being submitted between the resolution to not accept the officers recommendation and the final determination to refuse a month later. The two schemes affected were;

09/03138/FU – 3 houses to rear of 10 Elmete Avenue, Scholes – Members resolved to not accept the officers recommendation to approve and to go and visit the site before making the final decision. The appeal is being dealt with by written submissions and a costs claim against the Council has already been submitted.

09/05196/RM – Retrospective application for detached house (higher than approved previously) at Woodacre Crescent, Bardsey. The appeal is being dealt

with by written submissions and statements have been exchanged – no application for costs has been made or suggested.

3.2 Of the 12 applications where a resolution to refuse contrary to officer recommendation was made there have been a total of 7 appeals submitted so far following the receipt of the refusal notice. Only one of those appeals has so far been determined and was allowed – 11 houses to the rear of 30-36 Rein Road with no costs application. The Public Inquiry into the refusal of the open cast proposal at Newton Lane, Ledsham is shortly to conclude with every prospect of a costs application being made against the Council. A Hearing into the refusal of planning and conservation area applications for 3 houses at 2 North Lane, Oulton is due to take place at the end of June. Appeals have also been made against the refusal of two applications for 7 dwellings at 134-140 High Street, Boston Spa and for the substitution of two house types off Station Road in Allerton Bywater – these are all being dealt with by written submissions. There are two other refusals where appeals could still be made as the time period for making an appeal has not yet expired (6 months from refusal).

3.3 The experience of the past year does not suggest there is a major issue or risk around the delay caused by bringing detailed reasons for refusal back to Panel after Members have resolved to not accept officers' recommendation to approve applications. Of the 12 cases in the past year only two have resulted in appeals being submitted before the applications could be formally refused with detailed reasons. Whilst an application for costs has been made in one of these cases alleging unreasonable behaviour on the part of the Council this has to be decided by an Inspector in the light of the facts of the case. Most applicants at present appear content to wait for the detailed reasons to be decided before appealing - this is a sensible course as an appeal against non determination means that the application is decided by a Planning Inspector who takes on the role of decision maker and who needs to make the decision in the light of the Development Plan and all other material planning considerations. The advantage of a refusal notice is that the reasons are normally precise and targeted which clarifies the scope of the dispute between the parties at the appeal. It should also be remembered that it does take time to put together an appeal case and that applicants have 6 months in which to appeal ( apart from householders) and put together their detailed case.

3.4 There is merit, in straight forward cases, where possible reasons for refusal are clear and convincing of dealing with them at the meeting where Members resolve to not accept the officers' recommendation and deferring and delegating refusal to the Chief Planning Officer. Otherwise the present practice in 'the Planning Code' is tried and tested, conforms to national guidance in relation to Probity, and gives adequate time for officers to consider and advise Members on whether a refusal can be sustained and supported by detailed reasons and evidence.

#### **4.0 Conclusions**

4.1 Current practice in dealing with situations where Members at Panel resolve to not accept an officers recommendation to approve an application follows 'the Planning Code' and national best practice guidance. Outcomes over the past year do not suggest that the Council is put at a disadvantage by delaying the decision until the following Panel. However delays can be minimized in some cases by deferring and delegating refusal to the Chief Planning Officer where there is a convincing case for refusal and the reasons put forward are clear and substantiated. In cases however where there is a balance of considerations and the need for possible reasons to be

tested it is right to defer consideration for a cycle for officers to come back with a further report setting out possible reasons and the likely implications for the Council.