

DELEGATED

AGENDA NO:

**REPORT TO PLANNING
COMMITTEE**

DATE 8th DECEMBER 2010

**REPORT OF CORPORATE
DIRECTOR OF DEVELOPMENT
AND NEIGHBOURHOOD
SERVICES**

PLANNING GUIDANCE ON THE VALIDATION OF PLANNING APPLICATIONS

SUMMARY

- 1.1. This report invites the Planning Committee to note and endorse this document to assist officers of Stockton Planning Services in the validation of planning applications following consultation with interested parties as recommended by Central Government

- 1.2. In 2007 the Government amended the Town and Country (General Development Procedure) Order 1995 (the GDPO) to introduce a mandatory standard application form and associated information requirements for validation of applications, from 6 April 2008. Different types of application and scale of applications require different levels of information and supporting documentation to be submitted. Under these arrangements, this has comprised a national core list that applies in all cases and additional items specified locally from a list provided by the Local Planning Authority as agreed by the Planning Committee in February 2008

- 1.3. However in March 2010 the Government issued new guidance "Guidance on information and validation which requires Local Planning Authorities to review their published list of local information requirements. The purpose of this document is to outline the compulsory requirements of the Local Planning Authority and possible additional local information requirements for various planning applications in order for the Local Planning Authority to consider them as 'valid' planning applications.

- 1.4. This is aimed at enabling the Local Planning Authority to have sufficient information to confidently determine planning applications from the outset, in order to provide a fast and efficient planning service.

1.5. . The results of the consultation and analysis of representations now need to be considered by the Planning Committee for formal resolution and adoption of the local list. The period for consultation will expire the day after publication of this report and should any new comments be received they will be reported at the Planning Committee meeting.

RECOMMENDATIONS

1. Approval to the amendments recommended for inclusion in the local requirements for the validation of planning applications as detailed in the report and the agreed amended list be used as the local requirements when validating applications

2. DETAIL

2.1 This is a document to assist developers and Stockton Planning Services in the validation of planning applications. This document is intended to offer assistance and guidance to developers submitting planning applications detailing the expected requirements for a variety of types of planning application in order to achieve a quicker, more transparent and efficient planning service.

2.2 This document is intended to outline the current validation procedures of planning applications received by Stockton Borough Council, providing guidance on the information required to be submitted as part of a planning application.

2.3 This is aimed at lessening the ambiguity of what is classed as a valid planning application and enabling the Local Planning Authority to have sufficient information to confidently determine planning applications while offering a clear and detailed requirement from the outset in order to provide a fast and efficient service.

2.4 The national list sets out statutory requirements (which include the completed application form; the correct fee (where one is necessary); ownership certificates; agricultural holdings certificate; design and access statement (where one is necessary); the location plan; site plan; other plans and drawings or information necessary to describe the subject of the application; and environmental statement (where one is necessary) for applications).

2.5 The local list comprises additional information which local planning authorities can require to validate an application. The Government has required Local Planning Authorities to identify the drivers for each item on their existing local list of information requirements, if these are not already stated. These drivers should be statutory requirements, national, regional or local plan policies, or published guidance that explains how adopted policy should be implemented.

2.6 All Local Planning Authorities have been advised to review national, regional and local planning policy to ensure that they haven't missed any recent policies.

2.7 Having identified the information requirements, local planning authorities are advised to decide whether they need to prepare a new list or revise their existing local list, having regard to the principles and criteria set out in the guidance. Given the requirements set out by the Government it is considered necessary to prepare a revised list.

3. Proportionality

3.1 Local Planning Authorities have been strongly advised to adopt a proportionate approach. Some information may only be relevant in particular geographical contexts, or for specific types of planning application. Wherever possible, an LPA is required to set out the circumstances where a local list item **will** be required. Wherever possible, it should also set out the circumstances where a local list item **will not** be required. This is intended to provide greater certainty for applicants.

3.2 Where possible, the list should identify size thresholds below which the information is not required. For example, for householder and other minor development applications, it may be disproportionate to routinely request the submission of specialist technical reports.

3.3 The Government is concerned that in the past, some LPAs have taken a risk-averse approach and sought to impose a blanket requirement for the detailed technical reports referred to in some Planning Policy Statements. In some cases this was considered to be a disproportionate response. In revising their local lists, LPAs have been advised to focus on the principle of proportionality and not expect applicants to provide the highest levels of technical detail suggested in the PPS's' except for major or particularly sensitive development, where this may be appropriate.

3.4 Where possible, a graduated approach should be taken to the information required (e.g. dependent on the scale or sensitivity of the proposal). Local lists should reflect the fact that different scales of development may have different impacts, and – irrespective of the development size – that these impacts may vary depending on the characteristics of the site and surrounding area.

3.5 Local planning authorities are required to present their local list of information requirements clearly and concisely. The Government consider that the revised local list may be most clearly presented in the form of a matrix of requirements.

3.6 As changes were considered necessary, the proposals were publicised in the local community, including applicants and agents, for consultation. The consultation period was required to be no less than eight weeks and took place between 1st October and 30th November.

Appendix 1 to this report is the current list of local requirements which will be amended to include the proposed changes

Appendix 2 to this report is the revised local list and is presented in the form of a matrix of requirements.

4. The Process

The DCLG recommended process for determining information requirements for planning applications which has been followed was -

1. Review existing local list

□□□

2. Summary report of proposed changes

□□□

3. Consult on proposed changes

□□□

4. Finalise and publish revised list

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5 The whole process of reviewing, revising and publishing the local list should be completed by the end of December 2010 at the latest.

4.1 Minimum period for consultation with relevant stakeholders should be 8 weeks. Consultation Period 1st October 2010- 30th November 2010

4.2 Relevant stakeholders were: -

- Statutory consultees (including the Environment Agency, Natural England, English Heritage, the Greater London Authority, Network Rail, the local highway authority, Regional Development Agency, Strategic Health Authority, County Council and statutory undertakers)
 - Parish/Town Councils
 - Relevant voluntary and community groups e.g. Residents Groups/amenity societies
 - Agents/applicants forums or representative group of agents
- Groups or organisations referred to the adopted statement of community involvement.

4.3 Formal review of comments and report back for formal resolution and adoption of the local lists by the relevant committee 8th December 2010

4.4 The revised local list when approved by the LPA will be published on the Council website and there will be a clear signpost on the planning homepage to the section of the website where the local list can be found.

4.5 As this local planning authority has consulted and will be adopting local lists in accordance with the procedures outlined above, they can be used as the local requirements when validating applications under the amended GDPO.

When publishing the revised local list and any associated guidance notes, the date of publication will be clearly visible. This is to confirm that the list has been revised to reflect the new policy.

4.6 The Planning Portal will be informed of any changes that are necessary to the Planning Application Requirements (PAR) as a consequence of changes to the local list (e.g. downgrading the status of certain supporting documents from 'mandatory' to 'optional'). This is necessary to ensure that the information requirements for online applicants are updated to reflect the revised local list.

4.7 Authorities are advised to review their lists every three years and if they are proposing to make amendments (other than minor amendments) should re-consult and adopt new lists. Minor amendments to take account of statutory changes or Government guidance may be made as required without undertaking a full review or consultation.

5 Responses to Consultation

5.1 Highways Agency

The Highways Agency has reviewed the documentation relating to the local validation requirements for planning applications. In summary this document adequately captures the requirements of the Highways Agency and appropriate references to current guidance relating to Travel Assessments and Travel Plans

No changes required

5.2 Natural England

Thank you for providing Natural England with an opportunity to comment on the above. Our observations are as follows;

Local List Item 4: Biodiversity and Survey Report

Designated Sites

Rather than the generic statement '*Application for development that will affect areas designated for their biodiversity interest...*' a list of relevant statutory / non-statutory designations should be provided i.e.

International – Special Protection Areas (SPAs), Special Areas of Conservation (SACs), Ramsar sites.

National – Sites of Special Scientific Interest (SSSIs); National Nature Reserves (NNRs)

Local – Local Nature Reserves (LNRs), Local Wildlife Sites / Sites of Nature Conservation Importance (SNClIs)

UK / Local BAP (Biodiversity Action Plan) and Priority Habitats

In addition to the above designated sites, a survey and assessment should also be provided when a proposal may affect the following;

Habitats of Principal Importance for Biodiversity under S.41 of the NERC Act 2006

- Habitats identified as priorities within the UK or Local Biodiversity Action Plan
<http://www.ukbap.org.uk/UKPriorityHabitats.aspx>;
<http://teesvalleybiodiversity.org.uk/tees-valley-biodiversity-action-plan/>

Protected Species

The advice within columns three and five (*'Types of application that require this information'* and *'What info is required'*) is very broad. It is therefore likely to be of limited value to applicants or Local Authority validation clerks in reaching an informed decision as to whether ecological surveys are required in order to validate an application.

As such, rather than stating *'Where developments are likely to have any impacts on legally protected species or their habitats a wildlife survey will be required'*, Natural England recommend that more detailed guidance is provided as to the circumstances in which development *is likely* to impact on protected species and as such, where surveys *are* likely to be required.

There are a number of sources of existing information / guidance to assist in this process. The Association of Local Government Ecologists (ALGE) (2007) produced *'Local Requirements for Biodiversity: Validation of Checklists'* (2007) (<http://www.alge.org.uk/publications/index.php>) which provides a 'model' validation checklist for biodiversity. This also provides guidance in relation to designated sites and habitats (as above).

Natural England has recently consulted on draft standing advice which is intended to be formally rolled out later in the year. Standing advice provided local authorities with the necessary guidance to determine when protected species survey should be provided in support of an application.

http://www.naturalengland.org.uk/Images/Flow_Chart3_national_draftFINAL_tcm6-21596.pdf

While the above provide the basis for the development of the detailed biodiversity checklist, the LPA should also seek the views of the County / local authority ecologist and / or local Wildlife Trust as they may be aware of local priorities which should also be included.

The reference to English Nature on page 5 should be changed to Natural England.

Geodiversity

There is no reference within the document in relation sites which are of importance due to their geological / geomorphological interest. Survey and assessment should be provided where a proposal may affect the following sites designated for their geological interest;

□□ **National** – Sites of Special Scientific Interest (SSSIs); National Nature Reserves (NNRs)

□ **Regional / Local** –Regionally Important Geologic and Geomorphologic Sites (RIGS) / Local Geological Sites (LGS)

Local List Item 12: Landscaping

Point 12) This should also include SPAs, SACs and Ramsar sites.

Would also recommend that this includes applications which will affect areas of semi-natural habitat, particularly those which are listed as Habitats of Principal Importance for Biodiversity under S.41 of the NERC Act 2006 or as priorities within in the UK or Local BAP.

Recommendations to be included in the revised local List

5.3 Cleveland Emergency Planning Unit

With regards to the local validation requirements, I note that there is no mention of the industrial legislation to which we operate and plan for as an Emergency Planning Unit, but which also equally applies to the land use planning process. The legislation, principally the Control of Major Accident Hazard Regulations (COMAH) and Pipeline Safety Regulations, place consultation and public information distances/zones around sites and pipelines to which planning applicants need to be aware of and take account of.

Therefore, as part of the application for planning permission process, should reference be made to the relevant legislation in the local validation list so applicants identify if they are affected by the legislation and related land use zoning. For example, a developer may wish to build within the consultation zone of a COMAH site and should therefore be aware at an early stage of the implications of such proposed development at that location.

Information item	Policy driver	Types of application that require this information	Where to look for further assistance
Resilience Considerations	1) Pipeline Safety Regulations 2) Control Of Major Accident Hazard Regulations 3) Radiation (Emergency Preparedness and Public Information) Regulations 2001	Applications which can be considered as vulnerable to an identified hazardous site/corridor are detailed in the guidance.	The following document outlines the Padhi system www.hse.gov.uk/landuseplanning/padhi.pdf The planning authority holds information on the land use zoning provided by HSE. http://www.hse.gov.uk/landuseplanning/zonesmajorhazard.pdf

The information suggested by the Emergency Planning Officer does not fall within the scope of the Local List as it is information already in the public domain and would not need to be supplied with a planning application

Recommendations not to be included in the revised local List

5.4 Tees Archaeology

Tees Archaeology has commented that

With regard to **Archaeological Field Evaluation I** I recommend that the Types of Application column is changed to be more in keeping with PPS 5 policies HE 6.1-6.3.

The current wording might be substituted with: -

'Applications for sites which include, or are considered to have the potential to include, heritage assets with archaeological interest, should be supported by an appropriate desk-based assessment and, where desk-based research is insufficient to properly assess the interest, an archaeological field evaluation'.

The current wording in the column 'What Information is required' might be substituted with: -

'The information from the desk-based research and/or archaeological field evaluation should be presented in a report along with a statement on the possible impacts of the proposal on the heritage assets'.

The final column can remain as it stands but 'Sites and Monuments' should be replaced by 'Historic Environment' on both occasions it appears to reflect changing terminology.

With regard to **Listed Building appraisal and Conservation Area appraisal I** I recommend the following changes: -

References to PPS 15 should be replaced by PPS 5 to reflect the new numbering which changed from the draft.

The council should give consideration to adding Local List Buildings to the Type of Application column.

Recommendations to be included in the revised local List

5.5 Spatial Planning Manager

On page 3 re: archaeology and biodiversity Core Strategy Policy CS3 could also be mentioned under policy drivers,

On page 5 re: retail Core Strategy Policy CS5 could be mentioned and on page 13 re: open space Core Strategy Policy CS 6 could be mentioned.

Recommendations to be included in the revised local List

5.6 Arqiva Ltd (summarised)

Arqiva owns and operates the whole of the terrestrial radio and television networks across the UK. Arqiva owns and operates sites and services to other electronic communications operators. 4. All our sites are available for sharing by other public service operators and for networks operated by or for the emergency services.

Arqiva supports changes to the LPA's local List of Validation Requirements to lessen ambiguity and in turn this will help deliver speedier decision making, increased transparency and importantly consistency. However, to achieve this, the documentation requirements will need to be brought forward very carefully and where necessary reflect changes within certain businesses and industries, such as that relating to broadcasting and electronic communications

We observe that Local List Item 24 relates to validation requirements for 'telecommunications'. In terms of information required, it advises that "All telecommunications applications should be accompanied by a statement of Compliance with the International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines, evidence of assessment of alternative sites and/or mast sharing, and a justification for why the installation is needed"

The electronic communications industry has changed significantly since 2001. The mobile phone networks are now particularly mature. All main mobile phone operators are now in the process of network consolidation with the active decommissioning of several thousand sites. Where additional apparatus is required, the number of new sites required will be relatively small and their main activity concentrated on network upgrade and capacity improvements at existing sites. New sites may be required due to natural 'churn' (loss of sites due to impact from new development or not being able to renew lease agreements with landlords as typical examples). As such, the option of considering alternative sites, for example, is no longer a real prospect in many cases and hence the LPA's local validation guidance should reflect this point and that evidence of assessment of alternative sites should not be a mandatory requirement with all planning applications. In fact, paragraph 66 of PPG 8 is clear that it is only where a new mast is proposed that the local planning authority may 'reasonably' expect the applicant to show evidence that they have explored the possibility of erecting antennas on an existing building, mast or other structure (alternative site).

The term 'telecommunications' on the proposed Local List Item 24 is now outdated. The Communications Act 2003 effectively restructured telecommunications licensing and regulation in the UK. The wider term 'electronic communications' was introduced that reflects the Government's intention to promote a diversity of modern fixed and wireless communications. The Act led to the provision of the Electronic Communications Code (Conditions and Restrictions) Regulation 2003 that in turn provided a much wider range of 'electronic communication' providers that could potentially benefit from a range of 'Code Powers'. A principal benefit being the grant of permitted development rights (PDR) within Part 24 of the GPDO as amended. Consequential amendments have been made to various legislation including secondary planning legislation such as the GPDO. Part 24 now reads 'Development by Electronic Communications Code Operators', reflecting that the PDR in this Part is available for a range of electronic communications providers

as detailed in the OFCOM website. (There are also a range of companies that do not yet benefit from Code Powers and PDR).

Since 2001 there have been large changes in the electronic communications industry and there may now be a variety of different companies that might seek planning permission for new electronic communications apparatus (where they cannot rely on Part 24 PDR). This might include applications for:

- Digital Television Switchover
- Digital Radio
- Wireless Broadband
- Smart metering
- Mobile TV

Validation requests must be sufficiently flexible to recognise that these different forms of electronic communications may bring with them very different technical and planning related considerations. For example, broadcasting is very specialist in nature involving technical engineering solutions that are quite different from those relating to mobile telephony.

Should the LPA's validation requirements expect alternative site information for all new electronic communications development (as suggested in List Item 24), and then this would be particularly onerous and often irrelevant. For example, as explained above there are significant operational, siting and design difference between mobile phone telephony and radio and television broadcasting, the latter being very much limited to the use of existing broadcast sites. The switchover of existing television sites from analogue to digital without any new sites clearly demonstrates this point. The Governments letter circulated to LPA's across the UK in July 2006 clearly advised that digital television switchover would take place at existing sites. Alternative sites would not be real proposition and any information requests made by a LPA would not be reasonable or a valid request.

Furthermore, validation requirements should not be regimented with no allowances made for the scale of the proposal or impact on the local community. For example, the provision of alternative site information when a single dish is required to provide a link for an existing installation on an existing radio mast should not require alternative site supporting information. Such information is inappropriate having regard to the technical nature of the requirement, which is specific to the site, but in any event wholly out of proportion to any possible increase in visual impact and contrary to the whole thrust of government advice on the prior utilisation of existing masts and sites where practicable.

We advise therefore that the LPA's list of Local Validation Requirements for this subject should be given more thought and properly reflect current changes to the industry and what might be reasonable information requirements. Local validation requirements under Item 24 must have some in-built flexibility to reflect individual circumstance and what is being proposed. Furthermore, we reinforce this point that should additional information become necessary during the determination of a planning application, a request for additional information could be requested through Regulation 4 of the Town and Country Planning (Applications) Regulations 1988.

The Validation requirements also advise that ICNIRP will be required for all 'telecommunications' applications. The ICNIRP guidelines are meant to capture the installation of new antennas. There may be instances where equipment other than antennas might require planning permission – in such instances an ICNIRP should not be a mandatory validation requirement.

Prior Approval under Part 24

In terms of validation requirements for a GPDO application, then local validation requirements should not and cannot extend beyond what is the statutory requirement set down in existing legislation.

Although code operators might often provide a range of operational details and plans to support a prior approval application, it is clear that a valid application for prior approval is made when the statutory requirements have been met. These are less stringent than a LPA would expect for many planning applications and do not require, for example, elevational drawings. Additional information may be requested, such as ICNIRP, but those requirements should not invalidate the application. The GPDO is clear at A.3 (7) (b) that the decision should be made, in writing, within a period of 56 days beginning on the date on which the LPA received the application. Hence, Day 1 of the 56 days starts when the LPA has received the minimum statutory requirements for a prior approval application as we have explained earlier in this representation. That could be the same day they receive a valid application and the start date should not be postponed pending receipt of other non statutory supporting documentation.

You will be aware that this is a fundamental point as the prior approval process is not well understood by many LPA's and any guidance must be accurate and clear. The Council local validation requirements should make it clear what is necessary as a statutory requirement to validate the application and what might be desirable to help the consideration of that application such as ICNIRP or alternative site information if the proposal is for a new mast.

There are many case law examples where LPA's have misapplied these statutory requirements only for the application to become a default consent where the LPA has not made a decision within the 56 days. In England the Local Government Ombudsman produced a Special Report in 2007 on telecommunication prior approval applications and this gives examples where the minimum statutory requirements have been met and LPA's have mistakenly not determined applications within the correct timescales.

We therefore urge that these statutory requirements for a prior approval application are made explicitly clear in the list of Local Validation Requirements, possibly in a separate section for Part 24 prior approval applications.

Response

PPG 8 states at paragraph 30. "However, it is the Government's firm view that the planning system is not the place for determining health safeguards. It remains central Government's responsibility to decide what measures are necessary to protect public health. In the Government's view, if a proposed mobile phone base station meets the ICNIRP guidelines for public exposure it should not be necessary for a local planning authority, in processing an application for planning permission or prior approval, to consider further the health aspects and concerns about them."

The seventh of the ten commitments by the Mobile Operators Association is to provide, as part of planning applications for radio base stations, a certification of compliance with ICNIRP public exposure guidelines. Even if a certificate was not provided with a planning application, a mast could not be legally erected

However given the judgement in T-Mobile UK Ltd & Ors v. First Secretary of State & Anor [2004] EWCA Civ 1763 concerning the addition of new equipment to a mobile telephone mast close to two primaries and one junior school. The Court of Appeal said that it did not rule out that circumstances could arise that would cause public concern capable of amounting to a material consideration. However, the court held that the certainty of ICNIRP certification gave appropriate assurances on health. Lord Justice Laws "The Inspector appears to have considered that his conclusion that the appeal proposal provided insufficient reassurance on health was consistent with Government policy, notwithstanding the proposal's ample compliance with ICNIRP and an appropriate certificate having been given to that effect. That, in my judgment, was the error made by the Inspector which is central to this case."

With regard to information relating to Mast and site sharing Paragraph 66 of PPG 8 states "Local planning authorities may reasonably expect applicants for new masts to show evidence that they have explored the possibility of erecting antennas on an existing building, mast or other structure. Conditions in code operators' licences require applicants to explore the possibility of sharing an existing radio site. This evidence should accompany any application made to the local planning authority whether for prior approval or for planning permission." Therefore it is considered reasonable to request this information

Recommendation:

Proposed changes to "All telecommunications applications for planning permission for new Masts for mobile telephony"

And a second category

For applications for prior approval for masts for mobile telephony - Evidence of assessment of alternative sites and/or mast sharing,

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Financial Implications.

Improved quality of applications submitted enabling the Local Planning Authority to have sufficient information to confidently determine planning applications while offering a clear and detailed requirement from the outset in order to provide a fast and efficient service and meet Government Performance targets.

Environmental Implications.

As Report.

Community Safety Implications.

Not Applicable.

Human Rights Implications.

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report.

Background Papers.

The Validation of Planning Applications. Draft Guidance for Local Planning Authorities

The Validation of Planning Applications Guidance for Local Planning Authorities

Ward(s) and Ward Councillors(s).

All