

## **Report to Area Plans Subcommittee West**

**Date of meeting: 20 November 2013**

**Subject:** Threat of Special Measures and Refunding Of Planning Fees

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**Epping Forest  
District Council**

### **Recommendation(s):**

- (1) That the Subcommittee notes the new threat from the Governments "Planning Guarantee" of returning planning fees where planning applications are not decided within 26 weeks from being made valid,**
- (2) That Subcommittee notes the threat of "special measures" in respect of not achieving a timely decision on Major category planning applications and the extent to which such decisions are overturned on appeal,**
- (3) That the three Area Plans sub-committees note (1) and (2) above in determining planning applications in a timely manner; and**
- (4) That the Assistant Director (Development) encourages applicants, when necessary, to sign up to pre and post application agreements to extend the time period for determination so as to avert the return of planning fees or the Authority falling into "special measures".**

### **Report**

#### **1. Reasons for Proposed Decision:**

- 1.1. (Director of Planning and Economic Development) From 1 October 2013, the Government introduced a controversial policy with a requirement for local authorities to refund any planning fees if a council fails to decide an application within 26 weeks from an application being made valid. It does not apply to planning applications already validated before 1 October. This forms part of the government's "planning guarantee" initiative to speed up the delivery of development.
- 1.2. The policy goes further, in that those local planning authorities with 20 per cent or lower major development appeal decisions dismissed or fewer than 30 per cent of major applications decided within 13 weeks over a rolling 2-year period are to be placed in special measures, which would allow an applicant to submit any future major planning applications and its fee direct to the Planning Inspectorate.
- 1.3. The Assistant Director (Development) will need to monitor the turnaround time of planning applications to safeguard against any refund of planning fees or loss of income through designation of special measures. Decision making at planning committees with a deadline for any signing of section 106 legal agreements will need to be strictly adhered to and therefore it is recommended that this report also be brought

to the attention of the planning committees, where there is potential for delays on decision making. Where appropriate and agreed by applicants, agreements into extension of time for planning applications will be used, thereby allowing a longer acceptable time for planning application determination.

## **2. Other Options for Action:**

2.1 This is new planning legislation and there are no other options for action, other than to not take advantage of the extension of time where applicable, which leaves the Council vulnerable to being put into special measures and paying back the planning fee.

## **3. Report:**

3.1 The Growth and Infrastructure Act 2013 enables the Secretary of State to designate local authorities that are considered to be performing “poorly” in their determination of major planning applications. Designation will mean that applications for major development (e.g. development of 10 or more dwellinghouses, 1,000 or more square metres of floor space or 1 or more hectares) can be made directly to the Planning Inspectorate, on behalf of the Secretary of State, instead of to the designated local authority.

3.2 The performance of local authorities is to be assessed, on a rolling 2-year basis, against both the speed with which applications for major development are dealt and the extent to which such decisions are overturned on appeal. Authorities will be assessed against each aspect independently and so could be designated as “special measures” on the basis of either aspect or both. If 30% or fewer of a planning authority's decisions are made within the statutory determination period (or any agreed extension) or 20% or more of an authority's decisions are overturned on appeal then that authority will be designated because of its poor performance. These thresholds will be kept under review, with the intention of raising them over time to help drive improvements in performance. The planning fee in these cases would also go direct to the Planning Inspectorate.

3.3 The Council's performance in terms of determining major applications in 13 weeks over a 2 year period between July 2011 and June 2013 is 55% and therefore well outside the special measures threshold. It is anticipated at the time this report was being finalized and rolling this on for the 2 year period from October 2011 to September 2013, the Council's performance is likely to be about 58%. At this current rate therefore, there would not be a threat of the Council going into special measures, but it needs to be monitored and delays avoided.

3.4 Even if a local planning authority is put into special measures, the applicants can continue to apply to a designated local planning authority, instead of the Planning Inspectorate, if they wish to. It is important to note that applications made directly to the Planning Inspectorate forfeit any subsequent right of appeal. Designation can be revoked if the Secretary of State is satisfied that the designated authority has provided adequate evidence of sufficient improvement against its identified weaknesses. It is proposed that designation (and de-designation) should be undertaken once a year.

3.5 The “Planning Guarantee” means that all planning application types (not just Majors)

should spend no more than 26 weeks with either the local planning authority or, in the case of appeals, the Planning Inspectorate. While the risk of designation through poor performance should help to deliver the Guarantee, the Government now proposes also to require, as an additional measure, a refund of the planning application fee where any planning application remains undecided after 26 weeks. Applications awaiting a final decision because of the need to sign a Section 106 legal agreements are therefore going to be particularly vulnerable to meet this target, and potentially delays caused because of the late signature of the applicant.

3.6 It does mean that planning and legal officers will be faced with tougher timescales which could have direct financial consequences on Development Control income, particularly if developers are unwilling to sign up to an extension of time for determination on planning applications or hang on to, say the 27<sup>th</sup> week before signing a section 106 agreement, for example. The area planning subcommittee's meet on a 4-weekly cycle but any planning application requiring a decision at District Development Control Committee takes longer because of the 8-week cycle and in many cases have already been to an area committee meeting beforehand. Members of those committees therefore need to be made aware that deferring a decision from one committee meeting to another (the usual reason being for a Members site visit) should only be done in very exceptional cases and indeed, planning officers will look to encourage any formal Members site visits to be taken before the committee meeting. Planning application officers will also need to be aware of the deadline should any delegated applications approach this deadline, although this is very rare.

3.7 Agreements to extend the time for determination can be made for both major development applications and other applications that would normally be determined within 8 weeks. However, for the overall credibility of the planning system, extensions of time should really be the exception and efforts made to meet the statutory timescale wherever possible. In most cases this additional time will provide an opportunity for matters to be resolved positively so that a proposal can be recommended for consent. If an application is unacceptable in principle or cannot be modified to become acceptable it is likely that it will be determined within the statutory period. Clearly, the advantage of the extension of time, which requires the agreement of the applicant/developer, is that this becomes the new target date and if met, will not count against our performance.

#### **4. Summary:**

4.1 This report therefore serves the purpose of bringing to attention the possible financial consequences if there is no extension of time agreement in place if the 26 week target date is not met and secondly, if the time taken to decide Major planning applications in 13 weeks falls below 30% (20% for appeals). The concern though is not just financial, but also a democratic one if committee and delegated planning applications decision making is taken out of consideration by this authority.

4.2 There is a possibility that the terms of reference for District Development Control Committee and Area Plans Sub-Committees may need to be reviewed so that the time taken for reporting planning applications to a meeting, particularly major type applications, can be reduced.