



# Planning Committee

No Direct Ward Relevance

3rd November 2009

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## PLANNING SYSTEM - PROPOSED CHANGES

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(Report of Acting Head of Environment & Planning)

### 1. Summary of Report

To receive an item of information in relation to changes to the planning system that came into force on 1st October 2009 and further fee related information which will come into force imminently.

These changes are part of the Government response to the economic downturn and are designed to increase ways of encouraging developments that benefit from planning consent to be implemented.

### 2. Recommendation

**The Committee is asked to RESOLVE that**

**the areas of change to planning and associated consents, as detailed below and in the Appendix attached to the report, in relation to extending planning permissions and making non-material amendments to planning permissions, be noted.**

### 3. Financial, Legal, Policy, Risk and Sustainability Implications

#### Financial

- 3.1 There will be financial implications relating to planning application income as a result of these changes to legislation. Initially, these will be minor, but when new fee regulations are enacted and come into force later in the year, it is likely that fee income will reduce relative to the size and complexity of applications. How many applications this will affect in the Borough is unclear, and thus the impact is difficult to quantify. It is, however, a short term issue, as the changes will only apply for a short timeframe.

#### Legal

- 3.2 Members and Officers will need to ensure that they deal with and determine applications in line with the new system, which is set out in the following new secondary legislation:

The Planning (Listed Buildings and Conservation Areas)  
(Amendment) (England) Regulations 2009 (SI 2009 No. 2262)

The Town and Country Planning (General Development Procedure) (Amendment No. 3) (England) Order 2009 (SI 2009 No. 2261)

The Town and Country Planning (Fee Regulations) (England) Order 1989 (as amended) will also be amended shortly.

These are secondary legislation relating to the following primary legislation:

Town and Country Planning Act 1990 (as amended)  
Planning Act 2008

s.96A of the 1990 Act was introduced by s190 of the 2008 Act.

### Policy

- 3.3 There are no perceived impacts on Council procedures, other than within the detailed working of the Development Control team. There may be a need to amend the scheme of delegation to Officers in order that applications can be determined within the performance targets set by government, and if necessary, Officers will seek these amendments in the appropriate arena.

### Sustainability/environmental

- 3.4 These are criteria that are dealt with individually for each planning application, and thus require no additional consideration here.

### Report

#### **4. Background**

##### Economic downturn

- 4.1 The Department for Communities and Local Government (CLG) has proposed changes to the planning legislation as a response to both the current economic downturn and the recent Killian-Prety review of the planning process.
- 4.2 Recent changes to the statutory framework removed the opportunity to extend permissions, so now full applications have to be made in cases where consent has lapsed without being implemented. This results in a requirement for a full application for a proposed development to be submitted and considered afresh, rather than just considering a variation to the condition within a permitted application concerning the time for implementing the consent.

- 4.3 The concern now raised by the CLG is that the current scheme which requires the submission of a full application, with all its accompanying and supporting information, is expensive and unlikely to be pursued until such time as the economic climate improves and developers seek to begin commencement of development. In the current climate, it perceives that the existing planning system is therefore likely to delay implementation and discourage development.

#### Inconsistency across Local Planning Authorities (LPAs)

- 4.4 The issues raised relate to developments that have been granted planning permission, but have not been implemented, as well as the making of minor alterations to planning permissions – a situation which has previously never been catered for within planning legislation, leading to a variety of interpretations of law amongst Local Planning Authorities.

#### CLG process

- 4.5 The CLG also intend to set fees accordingly, however the changes to the financial legislation will take longer to enact, and therefore there will be a two stage process to charging for the new processes. The changes to the processes came into force on 1st October 2009, however the fees are not likely to come into force until December 2009.
- 4.6 The CLG consulted over the summer on these and other proposed changes, and the legislation now enacted differs from the original proposals following comments received.

#### Minor amendments (post-decision)

- 4.7 Members will be aware that from 1st January 2009 a small fee was introduced (in Redditch) to cover administrative costs associated with processing requests for dealing with post-decision amendments. In cases where the proposed variation would be Permitted Development once the development was implemented, or certain other very minor changes, these amendments are generally considered acceptable and dealt with by exchange of correspondence, with a record kept on the planning file. With the advent of the new regulations, this process has been superseded, however Officers have sought to retain the Redditch set fee until such time as the government set a national fee for such applications, which is likely to be more than that currently charged.

### 5. Key Issues

- 5.1 There are two main changes proposed in this new legislation, relating to the extension of time for implementation of planning permissions, and the submission of formal applications for non-material amendments to planning permissions. These therefore both relate to decisions that have already been made on planning applications, and are new types of application to amend existing permissions. Fees will be introduced in line with these new application types; however these are likely to follow in December as the legislation has yet to be enacted. A summary of the proposed changes can be found at Appendix 1 and Members are encouraged to retain this for reference.

#### Extension of time to implement extant planning permissions

- 5.2 These applications can be made where planning permission was granted on or before 1st October 2009, has not expired and development has not commenced. A new standard application form has been introduced, along with guidance notes. No design and access statement will be required, as it is considered that all the supporting information should have been included in the original application that gained consent. Plans will, of course, be required, and consultation requirements are also set out in the regulations. In some cases, updated information, such as in relation to biodiversity, may be necessary.
- 5.3 If many of these begin to be received, it may be necessary to insert an additional section into the local validation checklist, and Officers will keep this matter under review and report to Members as necessary.
- 5.4 This new system only applies to planning permission, so in the case of Listed Building Consent or other types of consent, complete new applications will still need to be made. It also does not apply to applications where an Environmental Impact Assessment (EIA) was required (see glossary at end).
- 5.5 Where an EIA was required within the initial application, different rules relating to the application for the extension of planning permission will apply to accommodate this. Few such applications have been received in recent years here in Redditch.
- 5.6 Local Planning Authorities will be required to consider the proposed development afresh, however no changes to the terms of the development proposal will be acceptable. Therefore, the description, details and site will be as previously given permission.

- 5.7 These applications will be considered in light of the development plan and all other relevant material considerations at the time of the application to extend the time limit, but clearly any consideration is likely to focus on any significant changes since the previous decision. Whilst it is therefore possible to refuse such applications, it is likely to be difficult due to the fact that the current Local Plan No.3 has been in place for more than three years, and so it is only likely where national planning guidance has changed significantly in the interim.

### Non-material amendments

- 5.8 These applications must be submitted on a new standard form, and determined within 28 days. The LPA is not required to consult or notify anyone, however the applicant has a duty to notify landowners and tenants where they exist. This is a simple process that will change little from the current exchange of correspondence approach, however, if representations are received within the first 14 days they must be taken into consideration. These applications will require minimal supporting information – only that necessary to show and explain the proposed amendments.
- 5.9 In most situations in planning law, where changes are not considered to be material, then the LPA has no control over such changes. Therefore, it is considered appropriate, in the interests of speed and customer service, as well as those of the planning system, that consultation does not occur in these cases. Whilst a LPA could undertake to conduct consultation, Officers do not consider it necessary in this case.

### Fees

- 5.10 Different fees for these two types of applications are also proposed, however changes to the fee regulations will take longer to enact, and so initially the fees will be as for a new application, until they can be amended (probably in December 2009). For extending time for commencement of development, a fee of £500 for a major application, £50 for a householder and of £170 for all other development types is likely to be introduced, rather than the fee for an application for the full development, as would currently be charged, and this therefore represents a reduction in fee income. For the non-material amendments, a flat rate of £170 was proposed in the summer consultation document, and early indications suggest that this will remain. This is more than the Redditch fee currently charged, and also more than the fee for a householder planning application, which may discourage these types of application from being made on such schemes.

- 5.11 As the Council has published its fees and has been charging them since 1st January 2009, it is considered reasonable to continue to charge these fees until alternative fees are set nationally.
- 5.12 Should any of these new applications be reported to the Planning Committee for determination, then Officers will clarify the process and material considerations to assist Members until they are more familiar with these.

**6. Other Implications**

There are no perceived impacts on Asset Management, Community Safety, Human Resources or Social Exclusion. Those which are material planning considerations are dealt with through the formal application process.

**7. Lessons learnt**

None identified.

**8. Background papers**

CLG consultation document Greater flexibility for planning permissions

<http://www.communities.gov.uk/publications/planningandbuilding/flexibilitypermissions>

New legislation cited above, and accompanying explanatory memorandum, which can be found at:

[http://www.opsi.gov.uk/si/si2009/uksi\\_20092262\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20092262_en_1)

[http://www.opsi.gov.uk/si/si2009/uksi\\_20092261\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20092261_en_1)

[http://www.opsi.gov.uk/si/si2009/em/uksiem\\_20092262\\_en.pdf](http://www.opsi.gov.uk/si/si2009/em/uksiem_20092262_en.pdf)

**9. Consultation**

There has been no consultation other than with relevant Borough Council Officers.

**10. Author of Report**

The author of this report is Ailith Rutt (Development Control Manager), who can be contacted on extension 3374 (e-mail: [ailith.rutt@redditchbc.gov.uk](mailto:ailith.rutt@redditchbc.gov.uk)) for more information.

## 11. Appendices

Appendix 1 – Working summary of the changes to the legislation

### Glossary

CLG = Department for Communities and Local Government

EIA = Environmental Impact Assessment (see Town and Country Planning (Environmental Impact Assessment) Regulations 2007)

Extant = permission that could still be implemented but has not yet been commenced

LPA = Local Planning Authority

PD = Permitted Development (under the relevant legislation, this is development that does not require consent from the LPA and thus falls outside its control)

**NEW PLANNING APPLICATION TYPES AND CONSULTATION REQUIREMENTS, FROM 1 OCTOBER 2009**

1) Applications for non-material changes to planning permissions

These applications must be:

- Submitted on the standard form (new!)
- Determined within 28 days unless otherwise agreed in writing between the applicant and the LPA
- No consultation/notification is required of the LPA
- The applicant has a duty to notify owners/tenants of the application, giving them 14 days to make comments to the LPA
- The LPA must take into account any reps made and not determine before the 14 day period is up (this may be less than 14 days into the application life)
- Currently these applications are free, but a new fee will be introduced by government soon.....

These can all be delegated, here in Redditch.

2) Extension of time applications

These can be made where:

- Planning permission was granted on or before 1 Oct 09; and
- Planning permission has not expired; and
- Development has not commenced

These applications must be:

- Submitted on the standard form (new!)
- No Design and Access statement will be required
- There are no local validation checklist requirements (yet!)
- Plans, drawings etc will be required sufficient to confirm that the application is identical to that previously approved (although the legislation doesn't make this clear)
- Consultation must be carried out with consultees/neighbours as if it were a new application
- Currently these applications attract the same fee as if it were an application for the proposed development, but a new fee will be introduced by government soon.....



3) New consultation requirements

For applications to:

- Vary conditions; or
- Relieve conditions; or
- Extend the time limit for development to commence (see 2 above)

There is a list of requirements to consult as you would normally do for an application for that development proposal.

CLG have now announced the following likely fees:

It is proposing different charges than consulted on earlier this year. CLG's revised proposals are: £500 for major developments, £50 for householder developments and £170 for other sizes of development. Parliamentary approval is needed for the new charges.