

East Herts Council Report

Council

- Date of meeting:** 18 January 2023
- Report by:** Councillor Jan Goodeve – Executive Member for Planning and Growth
- Report title:** Protocol for the submission of Planning Application representations
- Ward(s) affected:** All

Summary – this report recommends that the Council adopts a Protocol relating to the submission of planning application representations. In particular, this would relate to representations that are submitted regarding planning applications that are to be considered by the Development Management Committee (DMC). In order to ensure that both members of the committee and officers have sufficient time to receive, review and act on representations and so that decision making is not delayed, it is recommended that a timescale should be identified and agreed, after which the Council would not normally seek to receive further representations.

RECOMMENDATIONS FOR Council:

- a) That the Council adopt a Protocol in relation to the submission of representations regarding planning and other related applications that are due to be reported to the Development Management Committee as set out in Appendix 1 to this report.

- b) That delegation be given to the Head of Planning and Building Control in consultation with the Executive Member for Planning and Growth to revise and amend the detailed wording of the Protocol, as set out in Appendix 1 to this report, prior to its publication.

1.0 Background

- 1.1 Through the Councils scheme of delegation of decision making in relation to planning applications, the majority of application determinations are undertaken by the appropriate officers in the planning service team, utilising delegated powers.
- 1.2 Some application decision making is reserved for the Development Management Committee, of course. This generally comprising decisions on 'major' applications, as defined by the government.
- 1.3 Whatever the decision making route, it is a requirement that the decision maker (committee members or officers) take into consideration all representations received in relation to the application on which a decision is to be made, where material, before the determination of that application.
- 1.4 Determination cannot take place earlier than the date set out in notifications and publicity, in relation to any application, by which date representations should be made. In practice then, no determination is made during the notification period and, when one is subsequently made, all representations made during that notification period and up to the time of determination are taken into account. This ensures that any 'late' representations, ie those received after the conclusion of

the publicised period during which they should be made, are taken into account in decision making.

- 1.5 In practice this late submission of representations does not cause too many difficulties in relation to delegated decisions. Officers are able to check for the latest received representations, and ensure they are taken into account, immediately prior to determination.
- 1.6 Matters are more complex in relation to non-delegated, committee decision making however. In this case, for each application under consideration, officers will prepare a report for the members of the Development Management Committee. The report will set out a summary of all representations received, the relevant policy background, the impacts as a result of the development proposals and the mitigations proposed by the applicants, before recommending a decision for committee members to consider.
- 1.7 It is legally required that reports being considered by committees are published no later than 5 clear working days prior to the date of the committee meeting. Reports will be signed off internally a few days prior to that deadline and will contain information in relation to all relevant application representations received by that date.
- 1.8 Clearly, given the intervening time period, there is the opportunity for further representations to be submitted between report publication and committee date. Indeed, the publication of the report triggers this in some instances, as

those submitting them want to comment on the content of the officers report.

- 1.9 In order to address this, the Councils practice has been to provide a summary of any such 'late representations' immediately prior to the commencement of the committee meeting.
- 1.10 Whilst this has been an acceptable approach to ensuring that all information is in front of decision makers, in some recent instances, significant, complex and lengthy representations have been submitted with very little time allowed for their consideration and assessment, and for officers to provide advice to members, in advance of the commencement of the meeting. In some cases, such late representations have been submitted less than 24 hours in advance of the meeting.
- 1.11 Whilst not unlawful, this practice makes it difficult for fully considered advice to be provided to members and can sometimes result in the adjournment of items during or from meetings, delaying decision making.

2.0 Proposal

- 2.1 Given the above, and following consideration of the matter by the Head of Planning and Building Control and the Head of Legal and Democratic services, it is proposed that the Council adopt and publicise a deadline date/time beyond which it would not wish to receive any further representations relating to applications that are included on the published agenda of a forthcoming DMC committee as being for determination.

- 2.2 Generally, DMC committees are held on a Wednesday. It is considered that such a deadline should be identified as no later than 5pm, three working days prior to the date of the committee (not including the day of the committee). On most occasions, this would require submissions by 5pm on the previous Friday. If other days are identified as suitable for a committee meeting, or there are intervening public holidays etc, then the representation submission deadline would be adjusted accordingly.
- 2.3 Such an arrangement will permit two full working days during which the content of any late representations can be fully assessed and further advice sought in relation to them as may be necessary.
- 2.4 The suggested Protocol as set out in Appendix 1 to this report, if adopted, will be publicised on the Councils website and in material that is distributed to those who are contacted as part of the planning application consultation process. Delegated authority is sought for the Head of Planning and Building Control, in consultation with the relevant Executive member, to revise and amend the detailed wording of the Protocol prior to publication, if appropriate. This delegation does not extend to any amendment of the substantive element of the Protocol, ie the date by which representations are encouraged to be received.

3.0 Reason(s)

- 3.1 As indicated above, the adoption of a protocol in this respect is to enable members of the DM committee to be fully advised in

relation to any additional representations received after the publication of committee reports and before decisions are made.

4.0 Options

- 4.1 Potential options are either to make no changes in this respect, not identifying a deadline for the late submission of application representations, or to apply an earlier deadline.
- 4.2 The first of these, 'no change' does not address the situation where lengthy and complex representations are received with only a short period remaining for the assessment of them and for advice to be provided to committee members on them. As indicated, members may not be adequately advised as a result and this can lead to meeting adjournments and delays in decision making.
- 4.3 Seeking to apply an earlier deadline, would represent an unnecessary further restriction on the ability for third parties to make submissions on applications and be assured that they will be taken into account. The three working day deadline set out in this report is considered to represent an acceptable balance between the ability of third parties to make submissions and for the Councils officers to assess and provide advice in relation to them.

5.0 Risks

- 5.1 There are not considered to be any substantive risks associated with adopting a Protocol of the type set out in this report. There would remain a risk that such a Protocol, if adopted,

would not be adhered to by third parties, who would continue to submit representations after any deadline. Whilst that may still occur, the adoption of a protocol is likely to encourage submissions to be made in a more timely way.

6.0 Implications/Consultations

6.1 In relation to all impacts, more time to fully assess representations submitted late, will ensure that members can be appropriately advised and lessen any risk of any decision making which may not be fully informed.

Community Safety

No specific implications but, as above

Data Protection

No specific implications but, as above

Equalities

No specific implications but, as above

Environmental Sustainability

No specific implications but, as above

Financial

Deferred and adjournments to decision making meetings can result in additional delays and costs. The adoption of a protocol as recommended seeks to avoid such costs being incurred.

Health and Safety

No specific implications but, as above

Human Resources

No specific implications but, as above

Human Rights

No specific implications but, as above

Legal

The adoption of the protocol will not have effect in barring late representations that are legally permitted to be made, but instead seeks to discourage the making of such late representations.

Specific Wards

No – applicable to all wards

7.0 Background papers, appendices and other relevant material

7.1 None

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