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### Swindon Borough Council

#### Protocol for Dealing with Planning and Related Applications

Adopted by the Planning Committee 12<sup>th</sup> January 2016

##### 1.0 Introduction

1.1 This protocol was considered and approved by the planning committee at its meeting on 12<sup>th</sup> January 2016.

##### 2.0 Purpose

2.1 This protocol sets out how the Planning Department will deal with planning and related applications, including publicity arrangements, consultation and the determination of planning and applications

##### 3.0 The legal position

- 3.1 The requirements for publicising planning applications are set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Planning Authority is required to publicise a planning or related application once it has been validated.
- 3.2 In accord with legislation, in most cases, a 21 day period is given in which responses must be made. The application details are published online and are accessed via the planning pages of the council's web site. Once the consultation period has ended, the web site reflects this, and comments are no longer able to be submitted on-line.
- 3.4 There are also statutory publicity requirements for certain categories of development, which include the posting of site notices and publishing details in the public notices section of a newspaper, for example, proposals affecting a listed building and conservation area and major development.

##### Consultation with neighbours

- 3.5 The legislation sets out that in addition to certain statutory consultees, adjoining properties must also be made aware and given an opportunity to comment on planning applications. Swindon Borough Council has chosen to do so by notifying the neighbouring properties, i.e. those premises that adjoin the application site. This is done by sending a card to the properties concerned, informing them of the proposal and providing details of where the details can be inspected and the date by which any comments must be made. All post is sent out via 2<sup>nd</sup> class mail except in exceptional circumstances where first class mail may be used.

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Further information on the subject of this report can be obtained from *Andy Brown* on 466286 or Email [andybrown@swindon.gov.uk](mailto:andybrown@swindon.gov.uk).

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- 3.6 This system has generally worked well and has advantages over the alternative of posting of a single notice at or near the property, which affected neighbours may not read.
- 3.7 A period of 21 days is given in which responses must be made. The application details are published online and are accessed via the planning pages of the council's web site. As explained above, when the consultation period has ended, the web site reflects this, and comments are no longer able to be submitted online.

### General Consultation Principles

- 3.8 Notifications are sent to neighbouring occupiers whose properties adjoin an application site, whether or not they are residential neighbours.
- 3.9 In the case of a side extension to a house, those properties situated either side and to the front and rear will be notified. In the case of a rear house extension, only those to the side and rear will be notified. Similar principles will apply to a front only extension. Some developments that may have wider / off site impacts may be subject to broader consultation, including the use of site notices.
- 3.10 The position in respect of applications where revised details / plans are received is set out and discussed in more detail below
- 3.11 A revised notification exercise will not take place in each and every situation as the revised impact will need to be judged. If deemed appropriate to do so, notification takes the form of a card as with the original consultation exercise, albeit with a lesser timescale of 14 days allowed for responses.

### Use of IT / electronic media

- 3.12 The Government encourages the use of electronic media and the legislation reflects this by allowing consultation to take place in this format. The department takes advantage of IT and notifies most statutory and internal consultees by email. Similarly Parish and Town Councils are notified in this way.
- 3.14 Applicants are encouraged to submit their applications and documents / drawings electronically via the Planning Portal.
- 3.15 When an application is made electronically the planning authority may correspond with the applicant in this manner.
- 3.16 The Public Access System allows application details to be viewed through the Councils web pages.

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### Consultation with Swindon Borough Councillors

- 3.17 Members are made aware of applications through the weekly list of applications that appears in the Members bulletin, published each week and either emailed or posted to every Councillor. Where members request the weekly list as a standalone document, separate to the Bulletin, it is either emailed or posted to them as they may prefer upon request.
- 3.18 Ward Councillors are only notified by a card where re-consultation takes place following amendments to an application. This is because the amendments would not appear in the weekly list, which only report applications received and determined.
- 3.19 From time to time Councillors formally notified of new applications by receiving a card similar to that sent to neighbours. Although there is no requirement to do this, it does occur where the case office is of the view that that a proposal may be locally controversial or is a type of development that Ward Members have expressed an interest in and therefore special attention should be drawn to it.
- 3.20 Members will be aware that the software of Planning Departments 'Uniform' IT system has recently been upgraded to a more up to date version. Whilst some teething problems remain to be resolved, it is hoped that there may be an opportunity to configure the program to generate an email notification to the Ward Members after an application is validated. Whilst members will receive much more communication (email or hard copy) from the department than they currently do, this has the advantage of making members aware of each and every application in their Ward at a very early stage and before the local residents / neighbours receive their cards. When this is available all members will be contacted to see if they wish to be consulted in this manner.
- 3.21 It is up to the members of the planning committee to decide whether they want to change the current process of notifying and consulting members. However, it is the officers' view that the current system should remain, given the information set out in paragraphs 3.23 and 3.24 above.

### Consultation with Parish and Town Councils

- 3.22 The process of notifying Parish and Town Councils follows closely that for notifying neighbours, described earlier in this report. They are notified of applications within their area and are given 21 days to respond and 14 days when notified of revised plans.
- 3.23 The procedure is also contained in the Swindon Borough Parish and Town Council Charter 2015, agreed by the Parish and Town Councils, and the

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Swindon Area Committee of the Wiltshire Association of Local Councils in January 2015.

3.24 The Charter also confirms the ability of Parish and Town councils to request that applications be determined by the planning committee rather than by officers under delegated powers. This echoes the relevant clause in the Councils scheme of delegation but does require reasons to be given for the request as to why a particular application is considered to raise significant planning issues or is locally controversial.

3.25 Parish and Town Councils are consulted using electronic media

### Consultation following receipt of revised details / amended plans

3.26 A proportion of the applications dealt with are subject to revisions. The legislation does not require any further consultation to be carried out in such cases. However, along with most other local planning authorities, this council does so and this is generally regarded as good practice.

3.27 A revised notification exercise will not take place in each and every situation as the revised impact will need to be judged. If deemed appropriate to do so, notification takes the form of a card as with the original consultation exercise albeit with a lesser timescale of 14 days is allowed for responses.

3.28 In each case a judgement has to be made whether further consultation is necessary and if so whether it should be a 'wholesale' exercise or be proportionate to the impact of the revisions.

3.29 The following are examples where revisions would not normally lead to a further round of consultation being carried out:

- The revisions mitigate, address or overcome objections.
- The revisions reduce the scale or impact of a scheme to which no comments have been received.
- The revisions amend part of a scheme where no additional impact arises and upon which no concerns have been raised,

3.30 When it is deemed appropriate that a revised consultation exercise takes place, the notifications will be limited to.

- Those properties that lie adjacent to the location of the amended proposals.
- Those properties directly affected by the location of the amended proposals.

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- Those who have written in already and expressed concerns at the matters being amended – unless their stated concerns have been addressed

### Consultation on applications for the approval of reserved matters following grant of Outline permission

- 3.31 For applications that follow the grant of outline permission the department will notify only those immediately affected by the details of the reserved matters (in most cases they will be housing developments), rather than those further afield who whilst not agreeing with a development, will not be directly affected by the details – (e.g. layout and house types).
- 3.32 Reserved matters application that meet the definition of ‘major’ development (e.g. 10 houses or more) are publicised in the local newspaper and notice is displayed on the site. This is in addition to notifying affected ‘neighbours’.
- 3.33 Similar principles would be applied to applications for full planning permission where the principle of the development has been established by the grant of planning permission and a revised application proposes changes to the scheme – e.g. changes to a housing development to alter the layout / house types.

### Larger sites

- 3.34 The neighbour notification procedure described above requires all those properties adjoining the application site to be notified of the proposal. There are instances where this should be re-assessed and a more proportionate approach taken. For example there might be a proposal for a bike shelter within a large commercial complex or a school campus, where the application site might include the whole grounds. To avoid unnecessarily consulting a number of neighbours who may a significant distance away and will not be affected by the proposal a judgement will be made to ensure a proportionate consultation exercise is undertaken so that only those properties likely to be affected will be notified. Of course, a site visit might suggest otherwise and additional / wider notifications can / will be sent out.

### Certificates of Lawfulness

- 3.35 There is no formal requirement for a local planning authority to undertake any consultation upon receipt of either of these types of application. This is because they must be considered on the basis of fact rather than on the merit or desirability of the development. In clear cut cases, no neighbour consultation would be expected to be undertaken. However, there may be instances where the local planning authority may find it helpful to seek corroboration of the facts and evidence. In such cases there is nothing to preclude the local planning

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authority from seeking the views of local residents or any other interested parties to assist its deliberations.

### Telecommunications

- 3.36 Applications whether seeking planning permission or prior approval for Masts and paraphernalia associated with telecommunications including those by mobile phone and broadband operators can be controversial. Acknowledging this, all properties, including schools, within a 100m Radius of the site will be notified when applications are received.

#### **4.0 Reporting comments received.**

- 4.1 All comments / representations received are assessed and taken into account in the determination of applications. These are set out by the officer in the application report and commented upon / addressed as appropriate in reaching the recommendation / decision.
- 4.2 Where the application is to be considered by the planning committee, persons making representations will receive a card informing them of the meeting details to enable them to speak or be present for the debate.
- 4.3 There are often instances where objectors / supporters of a scheme produce a standard letter / email that is copied by many individuals and submitted in opposition or support a development. As members will be aware, it is the nature of the representation that is material not the number of times the same comment is made. Nevertheless, each letter is logged as an individual comment and each person will be notified of the decision and if applicable the date the planning committee meeting at which the application that the application will be considered at.

### Petitions

- 4.4 The local planning authority will continue to treat petitions that relate to a planning application as a single representation. When received, the petition will be logged as a comment from a single individual and this will be attributed to the author of any accompanying note or in the absence of any details identifying the originator of the petition, it will be attributed to the top signature on the first or top page. This protocol is confirmed and explained in the planning pages of the councils web site

#### **5.0 Determining applications**

- 5.1 Applications are determined either by the planning committee or by Officers authorised under the Council's Scheme of Delegation This is re-affirmed by Council each year as part of the constitution. The scheme as it applies to Parish Councils is referred to above but it useful to set out details.

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- 5.2 An application will be determined under delegated powers unless
- a) The Head of Planning, Regulatory Services and Heritage determined that it should be determined by the planning committee;
  - b) A member has requested in writing within 28 days of the date of validation that the application be considered by the planning committee;
  - c) A parish Council request within 21 days of notification the the planning committee considers the application because it raised significant planning issues or is locally controversial.

### Late representations

- 5.3 Applications dealt with by the Planning Committee
- 5.4 Representations received after the publication the agenda and up to the start of the meeting will not normally be circulated. The committee will be informed that additional representations have been received but the detail will only be reported where they raise new points or significantly add to those reported in the committee papers. If the comments are received very late, members may be advised that there has been insufficient time to assess or consider the information.
- 5.5 With regard to request for material to be circulated at the meeting, the Members Planning Code of Good Practice advocates against allowing documents to be circulated at Committee Meetings which have not previously been submitted to the Committee as all parties may not have had time to react to the submissions and officers may not be able to provide considered advice on the material. A recent case law - R (Joicey) v. Northumberland County Council [2015] indicates that the Court is likely to quash a decision where new materials have not been made available to the public at least five clear days before the relevant meeting, in breach of section 100D of the Local Government Act 1972. The objectors were said to have not had adequate time to prepare and respond in that case.
- 5.6 Applications dealt with under delegated powers.
- 5.7 Representations received after the close of the formal consultation period will be considered, provided that the case officer is aware of them before the relevant application report has been written. Representations received after this time will be taken into account by the Officer determining the application provided that he/she is aware of their existence prior to the application being decided. Decided in this case means that the decision has been authorised ( signed off)

### Non Material and Minor Material amendments

- 5.8 Recent changes introduced flexibility into the planning regime to allow applicants to amend their schemes in a less onerous way than by making a planning application. The options available include applications for a non-material

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amendment and a minor material amendment, the procedure is different for each approach.

- 5.9 There can be no hard or fast approach to which method is used as each case will depend upon the particular circumstances. Similarly, the appropriateness of the extent of any consultation will have to be considered on a case by case basis, having regard to the principles in section 2 above

### Site visits by the Planning Committee

- 5.10 It is now some years since the planning committee routinely deferred consideration of planning applications to enable a site visit to be undertaken by members. The committee has abandoned this practice due the extensive detailed application information available, both in the agenda papers and by the display of application material, photographs at the meeting. Should any interested party request a site visit, they will be advised of this resolution.
- 5.11 Individual members of the committee can, prior to a meeting, visit the site under their own volition with or without the appropriate Planning Officer if they consider it necessary.

### Conditions on planning permissions

- 5.12 Most planning permissions are subject to conditions which are discharged by Planning Officers. This takes place without any further round of consultation as the legislation make no provision or requirement for this to take place. Occasionally, there will be exceptional circumstances where members may wish to be made aware of such details and may for example request that Officers discharge a condition in conjunction and the agreement the Ward Councillors. Similarly the discharge of some conditions may require that technical or specialist input is sought.

### Appeals

- 5.13 When an appeal is received, all persons who were notified of and who commented upon the related application are required to be informed that an appeal has been lodged. The local planning authority must notify the interested persons but any comments they wish to make must be sent to the planning inspectorate who administer the process. The exception is in respect of 'householder' appeals where there is no further opportunity to comment.

### Permitted Development / Prior approvals

- 5.14 Informal requests for a decision on whether a proposal constitutes permitted development is no longer given. Such requests can be made via an application for a certificate of lawfulness. However, the scope of permitted development rights have recently been extended and relaxed.



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- 5.15 The relaxation has in many instances introduced a formal but limited consultation requirement, default approval where no representations have been made and also sets out the limited extent of matters that can be taken into account. For example, where larger 6m and 8m long house extensions are proposed, only the immediate neighbours are notified and if they do not object within 21 days, permission is deemed to have been granted. Members and Parish Councils are unable to have any part in this process. The local planning authority is required to determine such applications so as to comply with and be in accord with the relevant regulations.

### Local Development Orders

- 5.16 A number of Local development orders have been approved in the last 5 years, including those covering house extensions, development at employment locations, Low carbon energy and an area based order for Victoria Road. Each of those orders will specify the publicity that will be necessary. This will be less than for formal applications as a wide consultation exercise took place in the formulation of each order

## 6.0 Other Matters

- 6.1 From time to time the department is contacted by persons who request that they be formally notified of an application of which they have knowledge of and ask that they be sent a card. They are of course already aware of the application, which is the rationale for notifying, but have not been formally consulted. This is most likely because they live a little further away from a site than would trigger a notification. In such cases it is not appropriate to agree to their request as they clearly know about the development and are not prejudiced or precluded from commenting. To do so would extend the consultation period for a further 21 days which may not be desirable or reasonable. Criticism could also be levelled at the council for not informing others in a similar position. Such interested persons will be advised to comment on the application as this would trigger and ensure further notifications about the application will be sent to them as it progresses.

### Notification of the decision

- 6.2 After an application has been determined, persons making representations will not be notified of the decision by card as the details will be available via the planning pages of the councils web site. The card notifying them of the application will reflect this.

### Privacy statement / How personal information will be used

- 6.3 The Planning department receives a significant amount of correspondence on applications, much of which is required to be made available and published so that it can be viewed on-line. There is a requirement to ensure that sensitive

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information is not made available electronically, including contact details and signatures. Such details are redacted.

- 6.4 A privacy statement is published to ensure that those persons who make comments will know what will happen to the information they give us. The current wording along with other useful information that is also provided in this section is attached at appendix 1 to this report.

### Pre application consultation

- 6.5 The council encourages all applicants, developers and landowners to discuss their proposals with Borough Councillors (Ward Members) and the local community before submitting planning applications. However, the legislation as currently drafted does not make this mandatory. There may be instances where a developer wishes to carry out pre – application discussions about a potential scheme with the local planning authority that they do not want to be made public, even when these discussions include selected Statutory Consultations. The local planning authority will have to comply with such a confidentiality request, albeit the developer will be urged to share his scheme with the community at the earliest opportunity

### 7.0 Conclusion

- 7.1 Whilst this protocol will cover most situations and applications, there will always be the occasional proposal that will require special treatment or wider publicity. In such cases the local planning authority will continue to adopt a cautious approach of undertaking more, rather than less publicity.
- 7.2 In the event that any new regulation introduces arrangements different to those set out above, the requirements of the legislation will take precedent.