

BRECKLAND DISTRICT COUNCIL

Report of: Councillor Paul Claussen – Executive Member for Planning and Councillor Sarah Suggitt – Executive Member for Governance

To: Cabinet 7th September 2020

Author: Simon Wood – Director of Planning and Building Control

Subject: The Planning Register and General Data Protection Regulations

Purpose: To note the process whereby third party comments will be removed from the planning website after an application is determined.

Recommendation(s):

- 1) That Cabinet note the process whereby third party comments will be removed from the planning website following the determination of a planning application.

1.0 BACKGROUND

- 1.1 The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) [Part 9, Article 40] sets out the requirements with regard to the responsibilities on the Council as the Local Planning Authority (LPA) to maintain a 'Local Planning Register'.
- 1.2 The Local Planning Register should reflect every application for planning permission relating to the LPA's area and be kept in 2 parts:
- 1.3 Part 1 of the register must contain the following details in respect of each application, made or sent to the local planning register authority and not finally disposed of [i.e. this is the list of live planning applications]
 - a copy of the application together with any accompanying plans and drawings;
 - a copy of any planning obligation or section 278 agreement proposed or entered into in connection with the application;
 - a copy of any other planning obligation or section 278 agreement entered into in respect of the land the subject of the application which the applicant considers relevant; and
 - particulars of any modification to any planning obligation or section 278 agreement included in Part 1 of the register in accordance with sub- paragraphs (b) and (c).
- 1.4 Part 2 of the register must contain, in respect of every application for planning permission relating to the local planning register authority's area [this is the list of determined planning applications]
 - a copy of the application and of plans, drawings and Design and Access Statement submitted;
 - particulars of any direction given under the 1990 Act or this Order in respect of the application;
 - the decision, if any, of the local planning authority in respect of the application, including details of any conditions subject to which permission was granted, the date of such decision and the name of the local planning authority;

- the reference number, the date and effect of any decision of the Secretary of State in respect of the application;
- the date of any subsequent approval (whether approval of reserved matters or any other approval required) given in relation to the application;
- a copy of any planning obligation or section 278 agreement entered into in connection with any decision of the local planning authority or the Secretary of State in respect of the application;
- a copy of any other planning obligation or section 278 agreement taken into account by the local planning authority or the Secretary of State when making the decision; and
- particulars of any modification to or discharge of any planning obligation or section 278 agreement included in Part 2 of the register in accordance with sub-paragraphs (f) or (g)

1.4 In each case the copy of the required information may be photographic or in electronic form. Where the register kept by a LPA under this article is kept using electronic storage, the authority may make the register available for inspection by the public on a website maintained by the authority for that purpose.

1.5 The Council is required to keep in its register details of all the planning applications in its area together with associated plans and drawings, details of any decision once it's been made; and information on any associated legal obligations or associated agreements.

1.6 This list of requirements does not include third party or consultee comments. There is also no explicit requirement for a report explaining how the Council reached the decision.

1.7 A copy of the application together with any accompanying plans and drawings can be interpreted in a tight fashion. The accompanying plans and drawings can be construed (in the context of the Part 2 Register) as just those detailed on the decision notice. Superseded plans and documents no longer form part of the submission supporting the application made and therefore there is no requirement to keep these within the register.

Publishing applicant and objector details

1.8 The (old) PARSOL guidance stated that when LPAs “*are making planning application documents available on the Internet they should ensure that only those documents relevant to the public interest are shown at a given point in time.*” At present all comments received on an application are published on the website during the determination of an application and retained as visible after a decision has been made.

1.9 Apart from a high level vetting process which seeks to weed out obviously offensive comments, comments are published as submitted. In many cases this means that the person submitting them can be identified i.e “*I am the neighbour and live at no. 2*”. Information on where objectors live is helpful to the planning officer when undertaking their assessment, but it is difficult to argue that it is in the wider public interest for this to be known.

1.10 Consultee comments are often detailed in nature and are only summarised in the officers delegated or committee report. There is value during the application process for the full details of these technical comments to be available to view/download via the Council's website to allow the Applicant or their Agent to more fully understand any issues raised so these can be addressed.

Redaction

- 1.11 Publishing any comments received imposes a requirement upon the Planning Team to redact personal data. We redact in order to avoid any unnecessary disclosure of telephone numbers, email addresses or signatures. This process does generate an administrative burden on the team. There is also the risk that elements could be missed, or the interpretation of what is or isn't personal information could later be challenged, leaving the Council open to the risk of a possible accusation of a data protection breach.

Data Projection / GDPR

The [PARSOL](#) guidance was previously the best advisory document to Councils on how to publish details of still not been updated to reflect GDPR.

- 1.12 A data protection principle is that personal data shall not be kept longer than necessary. Further, we should only process such information, that is necessary and proportionate to do so. If we publish more data than is necessary we will be breaching data protection and could be liable for fines by the ICO and/or civil litigation by the data subjects. In the assessment of an application a report is produced by the case officer which should identify the relevant planning issues raised by in the responses received and set out how they have been considered. Similarly consultee comments are also summarised and addressed in the assessment made of the merits of the proposal. We publish delegated and committee reports on the website and therefore this summary of issues raised and the office interpretation/assessment of them is in the public domain.
- 1.13 After a decision has been made there are only 2 reasons comments made during the application process might be required:
- (1) An appeal has been lodged against the LPAs decision; or
 - (2) A legal challenge (JR) has been lodged.
- 1.14 In each of these scenarios there is a time limit within which these events must take place. Once these periods (6 weeks-6 months) have lapsed, there is no reason for the comments and other items not listed as statutory requirements of Part 2 of the Local Planning Register. As a consequence holding the comments made can no longer be argued to be necessary.

Publication

- 1.15 The proposed lists for what should be published at each stage is set out below:

During application:

Application form
Plans and drawings
Technical or Supporting reports
Consultee comments
Neighbour comments
S106 matters

Post Decision:

Application form
Approved Plans and drawings, Technical or Supporting reports as listed on the Decision

Notice
Completed S106
Officer report
Decision notice
Appeal / Challenge details (as required)

Post Challenge Period:

Application form
Approved Plans and drawings, Technical or Supporting reports as listed on the Decision Notice
Completed S106
Officer report
Decision notice
Appeal / Challenge details (as required)

2.0 OPTIONS

2.1 It is proposed that at the point of decision neighbour and consultee comments are removed from the website, these would however still be held within the electronic document management system (EDMS) to allow them to be turned on again if there is an appeal or challenge. Once the challenge period has expired, these comments could be deleted from EDMS. This course of action is recommended by Breckland Council's Information Governance Officer.

3.0 REASONS FOR RECOMMENDATION(S)

3.1 To enable compliance with General Data Protection Regulations.

4.0 EXPECTED BENEFITS

4.1 The reduction in risk of non-compliance with GDPR.

5.0 IMPLICATIONS

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Constitutional & Legal; Contracts; Corporate Priorities; Financial; Staffing. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1.1 Constitution & Legal

The Legal basis for imposing these charges is set out within the report.

5.2. Corporate Priorities

5.2.1 The proposal supports the Council's Priorities.

5.3 Financial

5.3.1 Financial implications are covered within the report.

5.4 Staffing

5.4.1 Staffing details are covered within the report.

6.0 WARDS/COMMUNITIES AFFECTED

6.1 All

7.0 **ACRONYMS**

7.1 None

Background papers:- None

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Key Decision: No

Exempt Decision: No

This report refers to a Discretionary Service.