

Report

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Report to:	Planning Committee
Date of Meeting:	7 July 2015
Report by:	Executive Director (Community and Enterprise Resources)

Subject:	Review of Legacy Planning Applications
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1. Purpose of Report

1.1 The purpose of the report is to:-

- ◆ Advise the Committee of planning applications which they had agreed to approve but for which consents have not yet been issued due to delays or failures to complete the associated Planning Obligations;
- ◆ Seek Committee approval to deal with these planning applications as recommended in Appendix 1.
- ◆ Seek Committee approval to adopt a standard timescale for completion of Planning Obligations and for planning applications to be refused, as set out in Appendix 2, should this timescale not be met without reasonable justification.

2. Recommendation(s)

2.1 The Committee is asked to approve the following recommendations:-

- (1) That, in respect of each of the planning applications listed in Appendix 1, the Committee approve the associated recommendation.
- (2) That the standard procedure detailed in Appendix 2 is adopted for the processing of planning applications that require the completion of a Planning Obligation.

3 Background

3.1 As members may be aware, in certain circumstances some aspects of a development cannot be controlled by planning conditions. In these cases Section 75 of the Town and Country Planning (Scotland) Act 1997 allows Planning Authorities to control and manage development by concluding legal agreements which place Planning Obligations on the applicant and landowner. In turn the issue of consent is withheld until the legal agreement is concluded and registered against the landowner's title deeds.

3.2 A Planning Obligation can relate to a number of matters such as the control of off-site road works, provision of affordable housing or a financial contribution towards recreational or educational provision. Previously, the commercial imperative to commence development was sufficient to ensure applicants took action to agree and execute a Planning Obligation reasonably quickly. However with the previous economic downturn this in some instances has not always happened.

- 3.3 In 2012, the Scottish Government, following consultation with Heads of Planning Scotland, introduced the Planning Performance Framework as a means to support continuous improvements within the Planning Service. A key aim of the Framework is to monitor the time taken by Planning Authorities to process applications from the date of validation to the date of issue of consent. This is with a view to improving the timescales of the decision making process. However, the non-completion of a Planning Obligation can prevent the Council from issuing consent and thus impact on the Council's performance.

4. Planning Performance Framework Requirements

- 4.1 The Scottish Government expects local developments and major developments to be determined within 2 months and 4 months respectively. It also assesses the Planning Service's performance on the basis of the average time taken for applications to be determined. Furthermore, Scottish Government is encouraging Local Authorities to enter into Processing Agreements for major applications. This seeks to establish a timescale in which a decision can be agreed with applicants. Related to this, it is considered appropriate that time limits should be imposed on applicants and landowners for applications that require the completion of a Planning Obligation. This will ensure the final stage in the application process, that of issuing consent, is not markedly beyond the date on which the Committee has made its decision to grant permission, and that the terms of the Planning Obligation remains relevant. Adopting this process will also encourage all the parties involved to complete this stage in the application process and thus improve the time taken to determine applications.
- 4.2 It is therefore proposed that, in future, where a Planning Obligation is deemed necessary, it should be concluded, within a specified time from the date on which the Report of Handling or Report to Committee is agreed. If the agreement is not in place by that date the application should be refused. The reasoning for the refusal would relate to the non-compliance of the Planning Obligation.

5. Current Applications with Outstanding Legal Agreements

- 5.1 Over the past year the Planning Service has carried out a review of legacy planning applications i.e. those planning applications that are over a year old that have Planning Obligations that have not been concluded. The applicants and agents of those applications, where little or no progress has been made, have been contacted and written to on several occasions in order to seek the conclusion of this matter and allow the decision notice to be issued.
- 5.2 From this review there are currently 9 applications where a Planning Obligation has been deemed necessary and where, it is considered there has been little progress made in it being concluded, within an acceptable timescale. Whilst it is recognised that activity in the development sector is improving, it is not considered, given the lengthy delays that have occurred, and with repeated approaches from Planning to progress matters that these planning applications will be concluded in the near future. These circumstances lead to uncertainty and have an adverse impact on the Service's Performance.
- 5.3 These applications are detailed in Appendix 1 which is attached to this report. These applications fall into 3 categories:-

- i) Applications where it is understood the applicant is no longer operating and there is no legal entity with whom to negotiate an agreement.

In respect of these applications as the Planning Authority has no power to withdraw the application unilaterally and as there is no legal entity to withdraw the application or conclude the Planning Obligation, it is recommended that these applications be refused for the reasons summarised in Appendix 1.

- ii) Applications where the applicant is refusing or delaying to conclude the Planning Obligation.

In respect of these applications as the failure to conclude the Planning Obligation rests with the applicant and an excessive time period has already been allowed by the Council to conclude this matter, it is recommended that the application be refused for the reasons summarised in Appendix 1.

- iii) Applications where concluding the Planning Obligation is progressing slowly but where conclusion could potentially be reached within a reasonable timescale.

In respect of these applications, it is recommended that the applicant be given a six month timescale within which to conclude the Planning Obligation or if they prefer, the opportunity to enter into a Processing Agreement within three months of the date of this Committee, failing which the application be refused for the reasons summarised in Appendix 1.

- 5.4 In order to dispose of each of these applications, Committee is requested to approve the decisions as recommended in Appendix 1. The relevant category is noted in the Appendix.

6. Planning Obligation Procedure

- 6.1 With regard to any new planning application or application which requires the conclusion of a Planning Obligation before the decision notice can be issued it is considered that these matters should be concluded within a period of six months from the date of approval of the Committee Report or the Report of Handling. If this matter is not concluded within this time period planning permission would be refused unless the applicant is prepared to enter into a Processing Agreement to conclude these matters within an alternative timescale that is agreeable to both the Council and the applicant. If this is not possible the application would be refused on the basis that, without the planning control/developer contribution to be secured by the Planning Obligation, the proposed development would be unacceptable.
- 6.2 It is considered that a period of six months gives adequate time for discussion and negotiation of the terms of any Planning Agreement. Appendix 2 attached to the report details the procedure that would be followed for applications that would require the conclusion of a Planning Obligation before consent could be issued.

7. Employee Implications

- 7.1 There are no employee implications. Any work undertaken can be met from existing resources.

8. Financial Implications

8.1 None.

9. Other Implications

9.1 There would be a reputational risk if this was not undertaken as this action is specified in the Council's Planning Performance Framework. In addition, there are no implications for sustainability in terms of the information contained in this report

10. Equality Impact Assessment and Consultation Arrangements

10.1 Although this report recommends a change to an existing policy, this policy area has been screened for equalities issues and is not relevant to the Council's equalities duties and, therefore, no impact assessment is required. The relevant applicants or agents were, where possible and appropriate, contacted regarding the applications referred to in this report. No further consultation is required.

Colin McDowall
Executive Director (Community and Enterprise Resources)

29 June 2015

Link(s) to Council Objectives/Values

- Demonstrating governance and accountability.
- The efficient and effective use of resources and managing and improving performance.
- Support the local economy by providing the right conditions for growth

List of Background Papers

- Planning Performance Framework 2013 – 2014
- Planning Performance Framework 2014 - 2015

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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