

DEVELOPMENT CONTROL COMMITTEE 6 JUNE 2013

Item 7 Revisions to Council's Constitution Relating to Planning

1. Recommendation

- 1.1 That the proposed amendments to Part 3 of the Council's Constitution be agreed by the Development Control Committee (DCC).

2. Background

- 2.1 On the 30 May 2013 changes to the General Permitted Development Order (GPDO) came into effect. The GPDO is a form of blanket planning approval provided by Government so that certain works can be undertaken without the need for formal planning permission to be obtained from the Local Planning Authority (LPA). Dacorum Borough Council is the LPA for this area.
- 2.2 In 2012 the Government announced that it would extend permitted development rights, for three years, in order to make it easier for homeowners and businesses to extend their properties. To address the concerns raised during the Parliamentary debate on the subject, the Government amended the Growth and Infrastructure Act 2013 to ensure that there would be a new neighbour consultation scheme that would be introduced alongside these new relaxations.

3. Extended Permitted Development – Householders

- 3.1 Previously permitted development rights allowed most householders to extend at single-storey level (subject to certain criteria) beyond the rear wall of the original house by three metres if an attached house or by four metres if a detached house. This has now been amended for a limited period ending in May 2016 to six metres for an attached house and eight metres for a detached house. These increased limits are subject to the neighbour consultation scheme.
- 3.2 These new relaxations in size allowances do not apply to certain areas including Areas of Outstanding Natural Beauty (AONB) and Conservation Areas. There will also be developments within the Borough where conditions were imposed at the time the original house was approved removing these permitted development rights.

4. Neighbour Consultation Scheme

- 4.1 The increased limits of six and eight metres are subject to the neighbour consultation scheme. The process requires that a homeowner wishing to build a larger single-storey rear extension must first notify the LPA. The LPA then serves a notice on adjoining residents those who share a boundary with the application site. These neighbours have a minimum of 21 days to comment.
- 4.2 If an objection is received within the 21 day consultation period, the Local Authority assesses the proposal in light of the objection and makes a decision about whether the impact on the amenity of all adjoining properties is acceptable. No other issues can be considered.
- 4.3 The Planning Minister considers¹:

“These proposals will build consensus by encouraging homeowners to talk informally to their neighbours in advance, and will be backed up by the Council acting as an independent arbiter. We believe that this strikes a good balance between the freedom of homeowners to invest in their homes and protection of neighbours..”

- 4.4 Importantly, if the Council fails to respond within the 42-day determination period, the development may go ahead. It is therefore imperative that the Council adopts procedures to ensure that these applications in a timely fashion.

5. Impacts of current procedure

- 5.1 At present the delegated powers exercised by officers to determine in excess of 90% of the planning related applications received by the Council can be withheld through specified limitations set out in the Council’s Constitution. Two key limitations are:

- Where a Town/Parish Council has expressed a contrary view to that of officers
- A call-in from a Borough Ward Councillor for an identified planning reason

- 5.2 When these (or the other) criteria in the Constitution are met the application is referred to the DCC for determination.

- 5.3 The Government is clear that the role for the Council is to act as the arbiter between neighbours. The only matter that can be considered under the process is amenity and therefore there is a difference in scope and intention between these proposals, covered by the Neighbour Consultation Scheme, and a full planning application.

6. Role of Town/Parish Councils

- 6.1 It is proposed not to formally consult Town/Parish Councils on the proposals submitted to the Council for Neighbour Consultation. If there is no objection from the neighbouring properties the application should be approved. Therefore, to consult the Town/Parish Councils would appear to exceed the Government’s intention.

- 6.2 At present an objection from the Town/Parish Council (if contrary to the view of the Case Officer) would necessitate the application being referred to the DCC. This could lead to an inappropriate situation where the application is before the committee when the adjoining residents have no objection. On this basis it is recommended that the powers of the Town/Parish Councils be amended for these applications.

7. Role for Ward Councillors

- 7.1 The Member call-in process would also be difficult to accommodate for these new proposals subject to the Neighbour Consultation Scheme. Should a Ward Councillor seek to call-in a submission, the timetabling of the committee

¹ http://data.parliament.uk/DepositedPapers/Files/DEP2013-0708/130423_Reply_to_Clive_Betts_re_GI_Bill.pdf

meetings might result in the deadline for determination being missed. In this scenario the application is approved by default.

- 7.2 The Council does get 42 days to deal with the application but following the validation of the application, assumed to be no more than 3 days, there is the minimum period of 21 days consultation. Officers would not look at the application during this period as their role only starts if objections are received. The powers for call-in extend the consultation period for a further period as Members have 28 days to exercise their rights. The committee normally works on a three week cycle although there are periods with large gaps between meetings. If officers are only aware of the need for an application to go to committee on day 31 of the 42 day determination process, then it will be very difficult to get the proposals written up and included on a committee agenda in the time available.
- 7.3 In order to help speed up the decision making process for these proposals it is recommended to amend the 'call in' period for Councillors to 21 days.

8. Proposed new role for the DCC Chairman and Vice Chairman

- 8.1 The Member call-in process allows for a greater degree of scrutiny to be shown for those applications where it is considered necessary and also helps to enshrine in the process a mechanism to hold officers to account. Whilst these are aspects which it is considered necessary to retain, it is proposed to introduce a streamlined system that will offer scrutiny and oversight without the need for all matters to be referred to the DCC.
- 8.2 For these proposals subject to the Neighbour Consultation Scheme it is proposed that where there is both an objection to the scheme from an adjoining owner or occupier; and a 'call-in' from the Ward Councillor, that the application being referred for a 1 week consultation with the Chairman and Vice Chairman of the DCC.
- 8.3 The consultation would include copies of all objections received together with a report drafted by officers setting out their assessment and recommendation. This consultation would have to be time limited and therefore it would be automatically assumed that there was no objection to the recommendation of officers.
- 8.4 Should the Chairman or Vice Chairman disagree with the recommendation before them it would be referred to the Assistant Director (Planning, Development and Regeneration) or Group Manager (Development Management and Planning) to be reviewed.

9. Other changes to Permitted Development

- 9.1 In addition to relaxations for extensions to dwelling houses, the Government has also introduced increased rights and relaxations to support business and economic development on a similar temporary basis expiring in May 2016.
- 9.2 For some of these increased rights there is a requirement for the developer to apply to the LPA for a determination on whether prior approval is required. This process allows the Council 56 days to determine whether prior approval is required and if so request a planning application be submitted. If no answer is given in the 56 days it is deemed that prior approval is not required and

therefore again it is imperative that the Council deals with these submissions speedily.

- 9.3 The new provisions subject to this prior approval are:
- Class J: Change of use from offices Class B1(a) (offices) to C3 (dwelling house)
 - Class K: Change of use to a state-funded school, from a use falling within Classes B1(business), C1 (hotels), C2 (residential institutions), C2A (secure residential institutions) and D2 (assembly and leisure).
 - Class M: Change of use of an agricultural building to a flexible use falling within either Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes), Class B1 (business), Class B8 (storage or distribution), Class C1 (hotels) or Class D2 (assembly and leisure).
- 9.4 At present a similar prior notification process for some works detailed within the GPDO exists for:
- Part 6: Agricultural Buildings and Operation on units of 5 or more hectares;
 - Part 24: Development by Electronic Communications Code Operators, and
 - Part 31: Demolition of Buildings.
- 9.5 The Constitution recognises these particular forms of application and specifically excludes them from the requirements to be referred to committee if there is a contrary view of the Town/Parish Council 2.3.2 (3), and specifically excludes them from the requirements to be referred to committee if the application is submitted by or on behalf of either Borough Councillors or members of staff 2.3.2 (6).
- 9.6 For the same reasoning, it is recommended that these existing exclusions be extended to include the new classes within the GPDO.

10. Drafting of new wording

- 10.1 The proposed amended wording to Part 3 of the Council's Constitution is set out at Appendix 1. For cross reference the existing wording is set out at Appendix 2.

10.2

Section	Alteration
2.3.2 (2a)	New provisions inserted to allow for revised Member 'call-in' to request a review by the Chairman and Vice Chairman of the Development Control Committee on applications subject to the Neighbour Consultation Scheme.
2.3.2 (3)	Insertion of Part 1 Classes A.4, J, K and M to exclude these matters which are subject to a prior approval process from referral to the Development Control Committee if contrary view expressed by Town/Parish Council.
2.3.2 (6)	Insertion of Part 1 Classes A.4, J, K and M to exclude these matters which are subject to a prior approval process from

	referral to the Development Control Committee if application submitted by Borough Councillors or members of staff.
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Appendix 1 – Proposed wording

PART 3 RESPONSIBILITY FOR FUNCTIONS

2.3 Delegation to Officers from Development Control Committee

POWER OR FUNCTION	TO WHOM DELEGATED
DETERMINATION OF APPLICATIONS	
2.3.1 The making of decisions or representations on all planning and other applications falling to be considered by the Borough Council as local planning authority.	Assistant Director (Planning, Development & Regeneration), Group Manager (Development Management & Planning) , the Assistant Team Leader, the Planning Casework Team Leader, or the Major Developments Team Leader

The above authority to include:

- the disposal of applications in accordance with Article 25 (11) of the Town and Country Planning (General Development Procedure) Order 1995
- the service of Building Preservation Notices pursuant to Section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990
- the authority to make applications for spot listing to the Department of Culture, Media and Sport or any successor Department.
- the making, varying or revoking of Tree Preservation Orders (including confirmation where there are no objections)

2.3.2 The following matters are excluded from delegation under paragraph 2.3.1:

- (1) Decisions on proposals other than householder developments*, which would have the effect, either cumulatively or otherwise of granting permission, consent or other approval for matters previously refused by the Development Control Committee
- (2) Decisions on proposals which any Borough Councillor representing the ward within which the application site is situated, or the Chairman, Vice-Chairman of the Development Control Committee or Portfolio Holder for Planning and Regeneration has, within a time period of no more than 28 days from public consultation commencement or date of the advertisement of the application, requested should be reported to the Development Control Committee and where that request is supported with material planning reasons.
- (2a) Decisions on proposals under the provisions of Parts 1, Class A.4 of Schedule 2 to the Town and Country Planning General Permitted Development Order 1995 (as amended) which any Borough Councillor representing the ward within which the application site is situated has, within a time period of no more than 21 days from commencement of the Neighbour Consultation Scheme has requested be reviewed, where that request is supported with material reasons relating to impact on amenity. Subject to there also being a formal objection to the proposal from any owner or occupier of any adjoining premises, the matter shall be referred for consultation with the Chairman and Vice Chairman of the Development Control Committee for a period of 7 days or lesser time as might be agreed. The consultation process shall include copies of all objections received together with a report drafted by officers setting out their assessment and recommendation. If no response is received within the consultation period there will be a deemed approval of the officer recommendation. Should the Chairman or Vice Chairman disagree with the recommendation the matter is referred to the Assistant Director (Planning, Development and Regeneration) or Group Manager (Development Management and Planning) to be reviewed and determined.

- (3) Decisions (other than those relating to applications for lawful development certificates, applications for approval required by condition or under the provisions of a Tree Preservation Order, applications under Part 1 (Classes A.4, J, K and M) and Parts 6, 24 and 31 of Schedule 2 to the Town and Country Planning General Permitted Development Order 1995 (as amended), notifications for the removal of hedgerows and works to trees in Conservation Areas) on proposals where a Town or Parish Council expresses a contrary view (either to object or to support) to that of the Assistant Director (Planning, Development & Regeneration) and Group Manager (Development Management & Planning) where that contrary view is supported with material planning reasons.
- (4) Decisions on large scale major development* proposals which are linked either to an existing agreement pursuant to s.52 of the Town and Country Planning Act 1971 or s.106 of the Town and Country Planning Act 1990 or to an existing or proposed planning obligation under s.106 of the Town and Country Planning Act 1990 (as substituted by s.12 of the Planning and Compensation Act 1991)
- (4a) Decisions on proposals seeking variations to existing legal agreements made either within 5 years or under Section 106A of the Town and Country Planning Act 1990 unless (in the opinion of the Assistant Director (Planning, Development & Regeneration) or the Group Manager (Development Management and Planning) they are considered to be minor variations.
- (5) Decisions on proposals for the construction of new buildings or the change of use of existing buildings either submitted by or on behalf of the Borough Council or affecting land or buildings in which the Borough Council has an interest.
- (6) Decisions on proposals (other than those relating to applications for lawful development certificates, applications for approval required by condition or under the provisions of a Tree Preservation Order, applications under Part 1 (Classes A.4, J, K and M) and Parts 6, 24 and 31 of Schedule 2 to the Town and Country Planning General Permitted Development

Order 1995 (as amended) or notifications for the removal of hedgerows and works to trees in Conservation Areas) submitted by or on behalf of either Borough Councillors or members of staff.

- (7) Decisions on proposals which, in the opinion of the Assistant Director (Planning, Development & Regeneration) or the Group Manager (Development Management & Planning) are of significant public interest, would have a significant impact on the environment, or should otherwise be reported to the Development Control Committee

*** Definitions**

Householder: Householder developments are defined as those within the curtilage of a house which require an application for planning permission and are not a change of use. Included in householder developments are extensions, conservatories, loft conversions, dormer windows, alterations, garages, car ports or outbuildings, swimming pools, walls, fences, domestic vehicular access including footway crossovers, porches and satellite dishes. Excluded from householder development are any work relating to a flat(s), applications to change the number of dwellings (flat conversions, building a separate house in the garden), changes of use to part of all of the property to non-residential (including business) uses, anything outside the garden of the property (including stables if in a separate paddock)

Large Scale Major Development: For dwellings, a large-scale major development is one where the number of residential units to be constructed is 200 or more. Where the number of residential units to be constructed is not given in the application a site area of 4 hectares or more should be used as the definition of a major development. For all other uses a large-scale major development is one where the floorspace to be built is 10,000 square metres or more, or where the site area is 2 hectares or more

Appendix 2 – Current wording

**PART 3
RESPONSIBILITY FOR FUNCTIONS**

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- (3) Decisions (other than those relating to applications for lawful development certificates, applications for approval required by condition or under the provisions of a Tree

Preservation Order, applications under Parts 6, 24 and 31 of Schedule 2 to the Town and Country Planning General Permitted Development Order 1995, notifications for the removal of hedgerows and works to trees in Conservation Areas) on proposals where a Town or Parish Council expresses a contrary view (either to object or to support) to that of the Assistant Director (Planning, Development & Regeneration) and Group Manager (Development Management & Planning) where that contrary view is supported with material planning reasons.

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