

PETITION – DETERMINATION OF MAJOR PLANNING APPLICATIONS

Executive Summary

Woking Borough Council has received a petition which asks the Council to not consider any planning applications for more than 10 dwellings until the Development Plan Document has been adopted.

In accordance with Woking Borough Council's arrangements for petitions, the matter has been referred for consideration by the Council.

Recommendations

The Council is requested to consider the petition and determine accordingly.

Background Papers:	None.
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Date Published:	25 November 2020

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1.0 Introduction

- 1.1 A petition has been received which asks the Council to not consider any planning applications for more than 10 dwellings until the Development Plan Document has been adopted. The petition has been received through the Council's online e-petition scheme and contains 473 confirmed signatories and 34 unconfirmed signatories.
- 1.2 The number of signatures exceeds the threshold required for a petition to be referred to a meeting of Full Council and accordingly the Petitioner or their nominee has been invited to present the petition at Council.
- 1.3 The petition has been submitted in the following terms:

“We the undersigned petition Woking Borough Council to not consider any major planning applications (more than 10 dwellings) until the public consultation on DPD is complete and the new DPD has been adopted.

This petition is important because there is a fear amongst residents that officers may unknowingly aid the developers against public opinion and recommend proposals that would otherwise be unacceptable. In the case of an existing determination deadline, it is possible for the council to request extensions from applicants. In the event that the council can't extend the determination dates, due to legal reasons (and such reasons only), the council determines that all such major applications (10 dwellings or more) be subjected to the comments, recommendations and all contents of the DPD including public opinion and inspector reports.”

- 1.4 The on-line petition went live on 2 November 2020 for a one month period up to 3 December 2020. On 15 November 2020 the petitioner asked for the deadline to be ended early in order for it to be considered at Council on 3 December 2020. On 16 November, Officers changed the end date to 17 November 2020 and sent an update to all those who had signed the petition.

2.0 Petitions Scheme

- 2.1 As the number of signatories exceeds 400, the petition falls to be debated at full Council. In accordance with the Council's scheme for dealing with petitions, the petitioner has been invited to attend the meeting and present the petition. The presentation of a petition is limited to not more than three minutes, and should be confined to reading out, or summarising, the purpose of the petition, indicating the number and description of signatories, and making supporting remarks relevant to the petition.
- 2.2 Following the presentation, Members will have the opportunity to ask questions of the petitioner. Thereafter, the Council will discuss the petition and determine what action, if any, is to be taken.

3.0 Officer Comments

- 3.1 Advice was recently obtained from Timothy Straker Q.C. on the Council's ability to defer determination of a major planning application whilst the Site Allocation Development Plan Document (SADPD) was going through the statutory process applicable to such documents. The following comments are based on Mr Straker's advice, which applies equally to the subject matter of this petition.
- 3.2 The Council is a local planning authority concerned both in the determination of applications for planning permission and the preparation of development plan documents. Such

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documents play a part in the determination of planning applications as an application needs to have regard to the development plan, so far as material, and to other material considerations.

- 3.3 One such material consideration is Government advice and, in particular, the National Planning Policy Framework (NPPF). The Site Allocation Development Plan Document (SADPD) is presently travelling through a process that will result in it coming to be formally part of the development plan, as statutorily defined. This process is referred to in the NPPF and is statutorily controlled.
- 3.4 An important part of a local planning authority's functions is the determination of applications for planning permission. Primary and secondary legislation sets out a clear process for such applications which local planning authorities should follow. The Government sets targets for the time within which applications should be determined. None of that process or those targets are affected by the fact that a development plan document is being prepared.
- 3.5 The preceding fact is of profound importance for it reveals that Parliament did not consider that planning control in this context of the determination of planning applications halts whilst a plan document was being prepared. Indeed planning control continues just as before, i.e. applications can be made and have to be determined. The legislative consequence is that all applications must be considered and determined by the local planning authority in the usual way. If this usual way determines the application prior to the adoption of any new development plan document then such is a mere coincidence; it is not a disqualifying event.
- 3.6 What constitutes a material consideration on an application for planning permission is not defined. This is recognised in the NPPF and at paragraphs 49-50 the Framework deals with an argument that an application may be premature given the promotion of a development plan document. In other words it could be a material consideration on a planning application that such a document was being prepared. However, Leading Counsel's advice is that as a matter of principle such an argument is weak, as Parliament expressly did not disable planning applications from being determined (or alter the process in any way) merely because a development plan document was being prepared.
- 3.7 The Council has a statutory obligation to accept and consider all planning applications submitted including those for more than 10 dwellings and cannot lawfully decide not to consider them. The extension of determination dates is with the agreement of the applicant who can decline to agree to extend the date. If no decision is made within the statutory time frame, applicants are free to appeal against non-determination of a planning application. An inspector can award costs on the basis of unreasonable conduct. In considering any application for costs an inspector will pay close regard to the NPPF. Consequently, if applications are either deferred, because of the concurrent plan process, or refused, on the basis of prematurity, the Council would be at risk of a costs order for having acted unreasonably.
- 3.8 When determining planning applications, the local planning authority gives due weight to any development plan document being produced and greater weight is afforded to it the further along the process the document is. The local planning authority also takes into account representations received on all planning applications. As such there is no sound basis not to continue to consider major planning applications.

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