

Planning Committee

10:00am, Thursday, 11 August 2016

Legacy Planning Applications - Update

Item number	6.1
Report number	
Executive/routine	Executive
Wards	All

Executive Summary

The purpose of this report is to update the Committee on the new procedure for dealing with legacy planning applications approved on 15 June 2015.

The new procedure put forward arrangements to reduce delays in concluding legal agreements before planning permission decision notices could be issued and so improve the Council's performance figures.

The report also informs the Committee on progress in removing non-legal agreement cases from the system.

Links

Coalition Pledges	P8, P17
Council Priorities	CO7, CO19
Single Outcome Agreement	SO1

Legacy Planning Applications - Update

1. Recommendations

- 1.1 It is recommended that the Committee:
 - 1.1.1 Notes progress on dealing with legacy applications.

2. Background

- 2.1 In February 2015, the Committee requested a report on procedures for dealing with legacy planning applications. The proposed procedure was agreed by Committee on 15 June 2015 with a requirement that a progress report is submitted to Committee one year later.
- 2.2 The new procedure involves sending an interim decision notice to the applicant for every post 15 June 2015 application which is minded to grant subject to a legal agreement. This notice requires that the legal agreement be concluded within 6 months. If this does not happen in practice, it was proposed that the report will be sent back to committee with a likely recommendation that the application be refused. The 6 month period to conclude the legal agreement would only be extended in exceptional circumstances and at the Head of Service's discretion.
- 2.3 In addition, there was a requirement that a standard letter should be sent to applicants of all pre 15 June 2015 applications less than a year old advising that there was now 6 months to conclude the legal agreement. Again, if this does not happen in practice, the report would be sent back to committee with a likely recommendation that the application be refused. Those cases that are over one year old would be re-assessed. All cases which did not raise new material planning considerations would be advised that they have 6 months to enter into an agreement. Those that need to be reconsidered as a result of more up- to-date development plans, changes to policies and guidance revisions would be reported to Committee.
- 2.4 Finally, the report stated that an annual legacy exercise should be undertaken on dormant planning applications over three years old. All cases should be written to asking whether the application can be confirmed as withdrawn. When they are ten years old they should be automatically withdrawn.

3. Main report

Legacy Planning Applications

- 3.1 A legacy planning application is defined as one which is more than one year old. The Scottish Government urges planning authorities to remove legacy applications from the system and in 2015 introduced this as a headline indicator in the Planning Performance Framework. In April 2015, there were 203 legacy cases over a year old and in April 2016, there were 163 legacy cases over a year old so there is some progress reducing the number of cases.
- 3.2 There are a number of reasons why planning applications may be over a year old. These can be summarised as follows:
- The application has been subject to a legal agreement and this has not been concluded;
 - Further information is required to complete the assessment such as a bat survey, a noise assessment or financial viability information;
 - Administrative errors. In some cases the decision notice has been issued but the back office system has not been updated;
 - The applicant does not want their application withdrawn; and
 - There is insufficient documentation to allow the decision to be issued.
- 3.3 The clearance of legacy cases is a rolling programme with old legacy cases being removed and new ones added as they become a year old. For instance, the 163 cases which were over one year old at April 2016 had reduced to 143 in June 2016 but 15 new cases had been added. Just over half the cases relate to delays concluding legal agreements on planning permission and planning permission in principle (see below).

Legacy Planning Application - non-legal agreement cases

- 3.4 Significant work has been undertaken to remove non-legal agreement cases from the system over the last year. This includes:
- 37 listed building legacy cases have been either withdrawn or decision letters issued. There are currently 7 cases outstanding;
 - 10 certificate of lawfulness cases have been confirmed as granted and the system updated. However, there are still 16 cases where the Legal and Risk team have been unable to confirm that the certificates have been issued, so an exercise will have to be undertaken with the applicants to confirm that they have received them before the cases can be closed off.
 - 11 planning permission/planning permission in principle cases have been either withdrawn or decision letters issued. There are still around 37 cases that are legacy applications.

- There are 12 applications where the applicant has either declined to withdraw the application (a warning letter is always sent) or where the case officer has advised that negotiations are continuing. These cases are under review.
- There are 25 further cases that are being further investigated before withdrawal letters are sent out or where investigations have not yet started.

Legacy Planning Applications – legal agreement cases

- 3.5 Currently there are around 83 legal agreement cases which are over one year old. Work has been ongoing to implement the new procedure for legal agreement legacy cases agreed in June 2015. The interim decision letter is sent for every legal agreement case and 6 months is given to conclude the legal agreement. Between 15 June 2015 and 22 June 2016, 74 interim decision letters have been issued. Of the 45 issued in 2015, 15 have had legal agreements concluded within the 6 months. Those issued in 2016 are still in their 6 month period. 21 cases from 2015 have been flagged as being beyond the 6 month period for concluding the legal agreement. No applications have yet been returned to Committee for further consideration from these cases.
- 3.6 Letters have also been issued on pre 15 June 2015 cases less than 1 year old giving 6 months for the legal agreement to be concluded. Legal agreements have either been issued or are in the process of being negotiated for all of these.
- 3.7 Limited progress has been made with older legal agreement cases which number approximately 62. Three applications dating from June 2012 to June 2014 have been re-assessed and have returned to Committee:
- Granton Walled Garden - it was reported to Committee on 29 July 2015 that the proposal could not be re-assessed under the new procedure because the education infrastructure requirements across Granton Waterfront had not been completed. The two duplicate applications have now been withdrawn;
 - Greendykes North - this was re-assessed at Committee on 29 July 2015 and the legal agreement was concluded 3 months later; and
 - Newcraighall Road - this was re-assessed 29 July 2015 and the decision was issued on 7 September 2015.
- 3.8 Withdrawal letters have been sent for half of cases from before June 2012 (40 cases) and three legal agreements have been concluded as a result of these. The remaining cases have still to be progressed.

3.9 Overall, the new procedure on legacy cases has had limited impact on clearing older legacy cases with legal agreements but has helped to focus on deadlines with newer cases. Delays in meeting the six month deadline are down to a number of factors:

- The high volume of legal agreements means the processing of these agreements is resource intensive. Whilst most are outsourced to private legal practices, the conclusion of the legal agreement is dependent on input from the case officer. Most case officers focus on current cases than looking at older ones which may not be active;
- Many of the cases that have not met the 6 month deadline are being actively progressed and reporting them back to Committee would be counter-productive. The focus in Edinburgh is on delivering sustainable economic growth and it is a priority to get this money in to meet the Council's infrastructure requirements; and
- Sometimes the delay is on the Council's side in responding to the requests for information from the drafting solicitor. This is due to the volume of casework and the preparation of Committee reports which is a time bound process which must be prioritised.

Legal Agreement Performance

3.10 Performance on legal agreements is monitored every month. The table below sets out performance timescales over the last 3 years:

Year	0-6 months	6 months – 1 year	1-2 years	2+ years
2013-14	47	6	4	15
2014-15	30	6	7	7
2015-16	27	22	2	6

3.11 There is no evidence that legal agreements are being concluded quicker and so leading to improvements in planning performance as predicted in the previous report to Committee.

Conclusions

3.12 It is not proposed to make any changes to the procedures at this stage. The introduction of a letter emphasising the 6 month period for conclusion of the legal agreement does provide a motivation for applicants and emphasises the option of reconsideration of the proposals by Committee if progress is not maintained.

- 3.13 The main challenge is finding a methodology for deciding which cases to return to Committee and a relatively straightforward means of doing this. Further proactive monitoring will be undertaken over the next year. Cases will be identified in a rolling programme and team managers will be requested to identify those that should return to Committee for a decision. The case officer will then be responsible for arranging a short returning report for Committee consideration.

4. Measures of success

- 4.1 A responsive planning process where legal agreements are concluded quickly and old cases are removed from the system to make it more efficient.

5. Financial impact

- 5.1 There is no direct financial impact arising from this report.

6. Risk, policy, compliance and governance impact

- 6.1 There are no perceived risks associated with this report. The report has no impact on any policies of the Council.

7. Equalities impact

- 7.1 An Equalities and Rights Impact Assessment has been carried out. The impacts are summarised below:

7.1.1 The efficient processing of planning applications and, in particular, the quick conclusion of legal agreements can make a valuable contribution to meeting the City's infrastructure requirements and so improve standards of living and through contributions to affordable housing, for example, reduce issues of poverty and health inequality;

7.1.2 The procedure for dealing with legacy applications can foster good relations by promoting understanding of planning processes and the expected outcomes from them; and

7.1.3 There are no other identified impacts.

8. Sustainability impact

- 8.1 The impact of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties has been considered, and the outcome is summarised below:

8.1.1 The proposals in this report will have no impact on carbon emissions because the report deals with the statutory planning process;

- 8.1.2 The proposals in this report will have no effect on the city's resilience to climate change impacts because the report deals with the statutory planning process; and
- 8.1.3 The proposals in this report will help achieve a sustainable Edinburgh because it will help facilitate the delivery of sustainable economic growth.

9. Consultation and engagement

- 9.1 There has been no consultation or engagement on this report as it is a factual update relating to planning application processing.

10. Background reading/external references

- 10.1 [Legacy Planning Applications Report 15 June 2015](#)

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11. Links

Coalition Pledges	P8 – Make sure the city's people are well housed, including encouraging developers to build residential communities, starting with brown field sites.
	P17 – Continue efforts to develop the city's gap sites and encourage regeneration.
Council Priorities	CO7 – Edinburgh draws new investment in development and regeneration
	CO19 – Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm
Single Outcome Agreement	SO1 Edinburgh's economy delivers increased investment, jobs and opportunities for all
Appendices	None