Development Management

Practice Note

Publicity Arrangements and Neighbour Notification

April 2015
Preamble

This Development Management Practice Note is designed to guide planning officers and relevant users through the requirements for publicising planning applications and carrying out neighbour notification and deals primarily with procedures as well as good practice. It forms part of a series of new practice notes stemming from the Planning Act (Northern Ireland) 2011 (the 2011 Act) and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.

Where appropriate this practice note will therefore highlight:

- Relevant legislation;
- Procedural guidance;
- Definitions;
- Best practice examples / relevant case law.

This guidance is not intended to replace the need for judgement by planning officers and those making planning applications. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note and legislation the provisions of the legislation will prevail.
1.0 Introduction

1.1 An important consideration for the council, or, as the case may be, the Department, in determining planning applications is the comments put forward by individual members of the public, residents groups and other organisations about development proposals.

1.2 The council or, as the case may be, the Department will seek to engage interested parties by publicising planning applications in the local press and on their respective websites. Planning applications are publicised in the local press in order to bring the details of development proposals to the attention of the public.

1.3 Furthermore, the council or, as the case may be, the Department has a statutory duty to carry out neighbour notification of ‘identified occupiers’ on neighbouring land. To allow sufficient time for the public to explore an application further, planning applications will not be determined before the expiration of 14 days from the date on which notice was first published, either on the website or in a newspaper and the date stipulated on the notice to any identified occupier, whichever date is the latest. Failure to follow these legislative requirements could leave the council or the Department, susceptible to Ombudsman cases, judicial reviews and ultimately could result in invalid decisions.
2.0 Advertisement

Background

2.1 There is a statutory requirement placed upon the council or, as the case may be, the Department to advertise planning applications and certain types of consents within local newspapers. This measure provides interested parties with an opportunity to consider and comment on development proposals. Publication of planning applications in the local press allows a council, or as the case may be the Department, to engage with a much broader range of interested individuals or groups than through neighbour notification alone.

Legislative Context

2.2 Section 41 of the 2011 Act states that arrangements for giving notice of applications for planning permission may be provided in a development order. The detailed requirements for publicising and giving notice of applications for planning permission is set out in the Article 8 of the Planning (General Development Procedure) Order Northern Ireland) 2015 (GDPO). This includes the advertisement of a planning application in the local press and publication of applications on a local council’s or the Department’s website.

2.3 Article 8(1)(a) of the GDPO states that where an application is made to a council or, as the case may be, the Department they shall publish notice of the application in at least one newspaper circulating in the locality in which the land to which the application relates is situated.
2.4 Article 8(1)(d)(i) of the GDPO prevents a council or, as the case may be, the Department, from determining the application before the expiration of 14 days from the date on which the notice is first published.

2.5 Publicity arrangements in respect of EIA development are contained within the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 (the EIA Regulations). In the case of a planning application accompanied by an environmental statement Regulation 20(a) of the EIA Regulations 2015 requires the council, or as the case may be the Department, to allow the public a period of 4 weeks from the date on which the notice is first published to make representations. Further information on the publicity requirements for EIA development is contained within Development Management Practice Note 7.

Pre-application procedures

2.6 Under section 27 of the 2011 Act and Regulation 5(2) of the Planning (Development Management) Regulations (Northern Ireland) 2011, a council or the Department is required to publicise a proposal to carry out development and to allow the public to make representations within a period of 4 weeks from the date on which the notice is first published.
Ireland) 2015 (DM Regulations) there is a requirement for developers to undertake pre-application community consultation before submitting an application for a major development. As part of this process a developer must publish in a local newspaper a notice containing details of the proposed development and the arrangements for a community consultation event. Further information on pre-application community consultation is contained within Development Management Practice Note 10.

Re-advertisement

2.7 During the processing of a planning application the situation may arise where a development proposal is amended. In this event consideration should be given to whether or not the application should be re-advertised. This is a matter for the discretion of the council or the Department, but which is linked to the nature of the application, the scale of the amendment and the level of public representations.

2.8 As a general rule planning applications should be re-advertised in the following circumstances:

a) there are material amendments made to the proposal e.g. there is an description to the proposal, significant changes in layout, design, number of buildings (including dwellings), amended access points, changes in landscaping proposals or other site works such as retaining walls which have an effect in the external appearance of the building;

b) Where significant additional and new information is provided in support of a proposal as above but also including traffic assessments, retail impact assessments, concept statements, noise reports, contaminated land remediation measures etc; and

c) Where an amendment / additional information relate directly to the grounds of objection. It should normally not be necessary to re-
advertise non-material changes in layout or access requested through the consultation process or changes in the design of individual dwellings negotiated with applicants (unless the amended design is linked to grounds for objection). However, each case should be considered on its own merits and any change, however minor, can be re-advertised if it is considered appropriate to do so.
Relevant Case Law

_Breckland DC v SOS and Hill [1992]_ involved a case where at appeal an inspector accepted an amended plan for a caravan site on an enlarged site. Affected persons were not informed. The High court quashed the SOS decision. They did not say that the enlargement of the site was itself invalid but in this case third parties had not been informed of the changes, thus depriving them of the right to make comments. In this instance the Court took the view that the change was substantial.

The PAC took account of the _Breckland_ judgement in deciding it had no jurisdiction to decide an appeal (1996/A227) in default of a decision in respect of an outline application for new access road and housing development at Hazlewood Avenue / Prehen Park, Derry. The application was the subject of an amendment which involved enlargement of the site to provide sightlines with no amendment to Certificate C under Article 22 (Section 42 of the 2011 Act) or re-advertisement of the proposal. Given the possibility of prejudice arising from the failure to readvertise the PAC considered that it had no jurisdiction to decide the appeal.

This point was substantiated in _British Telecommunications PLC v Gloucester City Council [2001]_ where Elias J, in dealing with the question of whether amendments to planning applications required the submission of a fresh planning application, stated “I would add that the interests of the public must also be fully protected when an amendment is under consideration. They were, however, fully protected in this case by the detailed consultation that took place in respect of these amendments”.

This case provides clarification that:

- A council or the Department is at liberty to consider amendments to planning applications at any time in the process;
- The one limitation upon freedom to amend is where the amendment would have the effect of altering the whole character of the application so as to amount in substance to a new application;
- The rights of the public must be safeguarded and they must be made aware of amendments being considered.
3.0 Publication of applications on a website

3.1 In addition to the statutory processes of advertising a proposal in the press and issuing neighbour notification letters, there is also a statutory duty on the council, or as the case may be the Department, to publish notices of applications for planning permission on their respective websites.

3.2 Article 8 of the GDPO states that the council, or as the case may be, the Department, will be required to publish notice of applications on a website maintained for that purpose and will not determine the application before the expiration of 14 days from the date on which the application is first published on the website.

3.3 In the event that a planning proposal is amended during processing it is recommended the revised details should be displayed on the relevant website accordingly and at the earliest opportunity.
4.0 Neighbour Notification

Legislative context

4.1 **Section 41 of the 2011 Act** states that arrangements for giving notice of applications for planning permission may be provided in a development order. Article 8(1)(b) and 8(2) of the GDPO provides greater detail in relation to the notification requirements.

4.2 Where an application for planning permission is made to the council or, as may be the case, the Department, the relevant council or the Department is required to serve notice of the application to any identified occupier on neighbouring land in accordance with Article 8(2) of the GDPO.

**Identified Occupier and Neighbouring Land**

4.3 **Identified occupier** means the occupier of premises within a 90 metre radius of the boundary of the application site.

4.4 **Neighbouring land** means land which directly adjoins the application site or which would adjoin it but for an entry or a road less than 20m in width.

4.5 As neighbour notification of identified occupiers is a statutory requirement, it is critically important that this requirement is carefully checked at an early stage in processing an application and any omissions are corrected as soon as possible. The application file should be updated accordingly.

**Contents of Notification**

4.6 Paragraph (2) of Article 8 of the GDPO sets out the required contents of notification and states that it must;
a) state the date on which the notice is sent;
b) Include the reference number given to the application by the council, or the Department;
c) Include a description of the development to which the application relates;
d) Include the postal address of the land to which the development relates;
e) State how the application, plans or drawings relating to it and other documents submitted in connection with it may be inspected;
f) State that representations may be made to the council or, as the case may be, the Department and include information as to how any representations may be made and by what date they must be made (being a date not earlier than 14 days after the date on which the notice is sent);
g) Include a statement as to how information explaining the manner in which applications for planning permission is handled and the procedures which are followed in relation to such applications can be obtained; and
h) Where the development to which the application relates is a class of development prescribed for the purposes of Section 27 (pre-application community consultation) of the 2011 Act, include a statement that notwithstanding that comments may be made to the applicant prior to the application being made, persons wishing to make representations in respect of the application should do so to the council, or as the case may be, the Department in the manner indicated on that notice.

Roles and Responsibilities

4.7 There is an onus on the applicant to identify the relevant addresses for notification on the planning application form but there is also an onus on the planning officer dealing with the application to take all
reasonable steps to check the accuracy of these addresses against the parameters of the scheme and make any necessary amendments.

4.8 Furthermore when carrying out a site inspection the planning officer should check the accuracy of notification carried out to date and identify occupiers that fall within the terms of the scheme that may have been overlooked. This can be the case, for example, where recently completed dwellings are not shown on the current Ordnance Survey map base or, in the case of new developments, certain properties are completed and occupied during the processing of the application. It is not always possible to know that a new dwelling has become occupied, however, if this information becomes available during the processing of an application further neighbour notification should be carried out where required.

4.9 In all instances the IT system and the application file should be updated accordingly to record all neighbours notified. Furthermore, it is good practice to verify notification at the application consideration stage. These checks should ensure that the statutory requirement is carried out by the council or, as may be the case, the Department, so as to avoid the possibility of an ombudsman case, judicial review or an invalid application.

4.10 Other relevant points in relation to the neighbour notification scheme include:

- If an adjoining building is sub-divided into multiple units (e.g. flats) each individual address should be notified;
- The scheme extends only to occupiers on adjoining properties, it does not include landowners who do not occupy the site;
- Anyone can make a representation in relation to a planning application; they do not necessarily have to be neighbour notified.
Re-notification

4.11 During the processing of an application, it may be necessary to re-advertise, re-neighbour notify and display on the relevant website, to advise members of the public that amendments have been made to the proposal. Where amendments or receipt of additional information merit re-advertisement, further neighbour notification should also be carried out. The reason for any further neighbour notification should be made clear.
Annex A

Table 1: Statutory Publicity Requirements

<table>
<thead>
<tr>
<th>Nature of Development</th>
<th>Publicity Required</th>
<th>Statutory Provisions</th>
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<tbody>
<tr>
<td>Outline Application</td>
<td>Advertisement in at least one local newspaper, neighbour notification and publication on council/department website</td>
<td>Article 8 of The Planning (GDP) Order (Northern Ireland) 2015</td>
</tr>
<tr>
<td>Full Application</td>
<td>Advertisement in at least one local newspaper, neighbour notification and publication on council/department website</td>
<td>Article 8 of The Planning (GDP) Order (Northern Ireland) 2015</td>
</tr>
<tr>
<td>Reserved Matters Application</td>
<td>Advertisement in at least one local newspaper, neighbour notification and publication on council/department website</td>
<td>Article 8 of The Planning (GDP) Order (Northern Ireland) 2015</td>
</tr>
<tr>
<td>Listed Building Consent</td>
<td>Advertisement in at least one local newspaper and publication on council website</td>
<td>Regulation 7 of The Planning (Listed Building) Regulations (NI) 2015</td>
</tr>
<tr>
<td>Conservation Area Consent</td>
<td>Advertisement in newspaper and publication on council website</td>
<td>Regulation 5 of The Planning (Conservation Area) Regulations (NI) 2015</td>
</tr>
<tr>
<td>Advertisement Consent</td>
<td>No statutory requirement to advertise or neighbour notify (At council discretion)</td>
<td>The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015</td>
</tr>
<tr>
<td>Non Material Change to Planning Approval</td>
<td>None required</td>
<td>Article 7 of The Planning (GDP) Order (Northern Ireland) 2015</td>
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</tbody>
</table>
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