



Committee report

COMMITTEE

CABINET

DATE

10 JANUARY 2019

TITLE

**CRITERIA TO REVOKE PLANNING PERMISSIONS
GRANTED BY THE LOCAL PLANNING AUTHORITY**

REPORT OF

CABINET MEMBER FOR PLANNING AND HOUSING

EXECUTIVE SUMMARY

1. The Council has set out an ambitious vision in its Corporate Plan and in the draft Regeneration Strategy for development on the Island. There are specific strategic requirements for housing and, specifically, affordable housing. These have been reiterated in the draft Island Planning Strategy that is now subject to public consultation.
2. Members have expressed concerns about developers undertaking the minimal work necessary to implement their planning consent but not completing the development and subsequently causing environmental problems.
3. Normally, planning permissions are granted subject to conditions which require development to commence within a three-year period or consent lapses. However, given the growth agenda being pursued, the Council may wish to revoke consents when there is no sign of development occurring before this period passes or where development has commenced and stalled with no evidence that it will be completed.
4. Section 97 of the Town and Country Planning Act (1990), as amended, provides local planning authorities with the power to revoke planning consents as they consider expedient.
5. This report proposes a set of criteria that the Council may wish to utilise when determining whether to revoke a planning consent previously granted. It also sets out how Section 215 Notices (enforcement notices) may be used as a pre-cursor to revocation.

BACKGROUND

6. The Council has set out an ambitious vision for the regeneration of the Isle of Wight in both its Corporate Plan and in the draft Regeneration Strategy. These are restated in the consultation draft Island Planning Strategy that has now been published for consultation (ending in February 2019)

7. The Council's vision includes housing development to meet the needs of the island including a considerable element of affordable housing. The plans also include the employment and infrastructure development to support the housing requirements and provide for sustainable development.
8. Members have expressed concern that new homes are not being built quickly enough to meet local needs and are seeking tools to intervene to help increase delivery. Members are also concerned at the impact overgrown and/or derelict sites have on visual amenity for residents and potential investors

STRATEGIC CONTEXT

9. The Corporate Plan 2017 to 2020 set out an ambition to deliver appropriate schemes to meet housing needs of the island, deliver employment sites and appropriate infrastructure.
10. The draft Regeneration Strategy takes these ambitions further and proposes housing development to both meet housing needs and contribute to the wider economic regeneration of the island. This document cites the housing needs assessment as identifying the requirement for 641 new dwellings per annum over the forthcoming local plan period as necessary to meet the objectively assessed housing needs of the island.
11. The consultation draft Island Planning Strategy (Local Plan) reiterates the annual requirement and provides land use allocations for this level of development.
12. Given the clear strategic commitment to meet housing requirements as part of the Councils Regeneration agenda, it is important to have a range of tools available to intervene and increase delivery should that be required.
13. Members are concerned that developers may gain their planning consent but then only undertake the minimum of work to demonstrate they have implemented the planning permission but make no further progress. Members see this as a potentially impacting upon the ability to deliver the growth requirements and [b] lead to overgrown and unsightly development sites. The latter also undermines the high-quality environment sought to support the Regeneration Strategy.

REPORT

14. The local planning authority has several powers that can be of relevance in this type of situation. These include Section 215 of the Town & Country Planning Act (the power to issue enforcement notices) and Section 97 of the Town and Country Planning Act 1990 (as amended) which provides local planning authorities with the power to revoke or modify a previously issued planning permission.
15. Section 215 of the Town & Country Planning Act is a discretionary power allowing local planning authorities to serve notices on the owner and occupier of land if they consider that the amenity of their area or of an adjoining area is adversely affected by the condition of the land or buildings. A notice under this power will also specify the works necessary to remedy the situation and the timescales for completion of the remedial works. In this context, it needs to be noted that Section 215 Notices cannot be served on active development sites.

16. Best Practice refers to using Section 215 notices as part of the tools available to local planning authorities to improve the quality of the environment within their areas. Section 215 Notices can follow on from either a complaint or from adopting a proactive approach to enforcement.
17. If the Section 215 notice is not followed, the local planning authority has further powers to enter the land and undertake necessary works and charge the owner/occupier for doing so. However, there will be financial risks associated with this action as the monies can only be recovered via a charge when the property or land is sold. It is usual practice for non-compliance to be taken through the courts.
18. To revoke a planning permission previously granted Section 97 requires the local planning authority to demonstrate robust evidence as to why such a course of action is necessary. Officers suggest that when determining whether to apply Section 97, there is a set of agreed criteria against which the necessary evidence can be assessed.
19. It is suggested that the following criteria are used in this regard:
 - (a) It is at least two years since the date the decision notice was issued;
 - (b) There has been no visible activity on site in relation to the development since the planning permission notice was issued;
 - (c) The land ownership has changed since the decision notice was issued
 - (d) The developer has filed for bankruptcy
 - (e) Any pre-commencement conditions have not been progressed
20. The Council will need to consider revoking planning permissions on a case by case basis and will need to have an appropriate level of approval to proceed given the potential risks to the Council that such a decision may have. In this context, it is recommended that the final decision to revoke a planning permission lies with Full Council. Whilst the above criteria may be used to determine that the process of revocation should proceed, the revocation rationale itself needs to be justified on planning grounds. From this, it is suggested that Planning Committee makes a recommendation to revoke on planning grounds and then refers this matter to Full Council for a final decision.
21. When complex Section 106 Agreements are involved, there may not be any development on-site, whilst these are being negotiated between the developer and the local planning authority. This should not be taken as inaction by either party. Given that the decision notice is issued upon signing the legal agreement, it follows that the above criteria applies from this date.

CONSULTATION

22. There has been no formal consultation undertaken at this stage of the process and any decision to progress with a revocation of a planning consent is likely to have followed dialogue and discussion with the landowner/developer to understand the reason why an approved scheme has not commenced or has stalled. When revoking a planning permission, the local planning authority has to serve notice on the landowner and developer who can then object to the Secretary of State.

FINANCIAL / BUDGET IMPLICATIONS

23. There are no direct financial implications of this report as it proposes criteria under which future decisions may be taken. However as set out elsewhere there may be financial consequences of taking a decision in future to revoke a planning permission.
24. Revocation of planning permissions is a discretionary power available to local planning authorities. There will also be considerable scrutiny of the process and evidence provided in progressing a revocation. This will require resources to be provided from within Planning & Infrastructure Delivery that will impact upon day to day service delivery.

LEGAL IMPLICATIONS

25. Section 215 of the Town & Country Planning Act is a discretionary power allowing local planning authorities to serve notices on the owner and occupier of land if they consider that the amenity of their area or of an adjoining area is adversely affected by the condition of the land or buildings.
26. Failure to comply with a Section 215 Notice is an offence and upon conviction the owner/occupier can face a penalty not exceeding level 3 on the standard scale. Failure to act in accordance with the notice after being found guilty is a further offence and accrues further penalties.
27. There is a right of appeal to the Magistrates Court once a S215 Notice is issued. Further to this, if the Magistrates Court dismissed the appeal, there is a further right of appeal to the Crown Court.
28. If the S215 notice is not followed, the local planning authority has further powers to enter the land and undertake necessary works and charge the owner/occupier for doing so.
29. It should be noted that there is no legal definition of “amenity” and hence harm to amenity and specifically the extent of this harm is a matter of judgement.
30. Section 97 of the Town and Country Planning Act 1990 (as amended) provides local planning authorities with the power to revoke or modify a previously issued planning permission.
31. This power allows the local planning authority to revoke or modify planning permissions if the authority considers it expedient to do so. The authority must consider the development plan and other material considerations when making this decision.
32. This power can be exercised at any time before a development is completed regardless of whether development has commenced or where the planning permission relates to a change of use and this has not been completed. It cannot be exercised once the development is completed.
33. Where a local planning authority determines to issue a Revocation Order, if there is any objection to the Order, it must be referred to the Secretary of State for determination.

34. Section 98 of the Town and County Planning Act 1990 (as amended) requires the local planning authority to serve notice on [a] the owners of the land affected, [b] the occupier(s) of the land affected and [c] other interests as is considered appropriate. These parties must have a minimum of 28 days to inform the Secretary of State that they wish to be heard a representative of the Secretary of State.
35. Section 107 of the Town and Country Planning Act 1990 (as amended) provides for the local planning authority to pay compensation to developers when a planning permission has been revoked. This compensation can be required to cover costs associated with the preparation of plans for the proposed works and for any loss or damage directly attributable to the revocation.
36. Legal Services will need to resource any decisions to both issue Section 215 Notices and revoke a planning permission by preparing notices and in assuring that these are served on all relevant parties.

EQUALITY AND DIVERSITY

37. The council, as a public body, is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation
38. There are no direct equalities and diversity implications arising from this proposal as it aims to set out objective criteria against which decisions to revoke planning permissions will be made.
39. There may be equality and diversity issues arising from a decision to revoke planning permission and these will be set out in the reports regarding a specific planning consent.

PROPERTY IMPLICATIONS

40. There are no direct property implications if the recommendations within this report are accepted by Cabinet.
41. There would be implications in the future if a planning permission was granted on Council owned property and then subsequently revoked. This would be considered on a case by case basis. This is, however, at this stage considered unlikely.

OPTIONS

42. Option 1 – to consider revocation of unimplemented planning permissions on a case by case based, based on one or more of the following criteria:
 - (a) It is at least two years since the date the decision notice was issued;
 - (b) There has been no visible activity on site in relation to the development since the planning permission notice was issued;
 - (c) The land ownership has changed since the decision notice was issued
 - (d) The developer has filed for bankruptcy
 - (e) Any pre-commencement conditions have not been progressed

That the planning case for any consideration of revoking a planning consent is considered by Planning Committee and then referred to Full Council for final approval.

43. Option 2 – to accept the principle of Option 1 but consider and revise the criteria.
44. Option 3 – to adopt a two-tiered approach to the non-development of sites with planning consent.
 - (a) Progress via Section 215 Notice to ensure that [i] the amenity of the site is improved and [ii] an incentive is thereby given to the developer to implement the planning consent;
 - (b) Initiate revocation processes if (a) above fails using the criteria outlined in Option 1 above (or as amended by Cabinet in Option 2)
45. Option 4 – to make no change to the current processes.

RISK MANAGEMENT

46. By setting out criteria under which the local planning authority may consider revoking planning permissions, there is a possibility it will inhibit developers from proposing development that they may not be able to rapidly deliver. The inherent message may be interpreted as the Council is not as “open for business” in the manner implied within the Corporate Plan, the draft Regeneration Strategy and in the consultation draft Island Planning Strategy. This can be mitigated by clarity that the revocation of planning consent is essentially as a “last resort” to help ensure appropriate development is implemented on sites.
47. The more substantial risk to the Council occurs if a decision is taken to revoke a planning permission. Section 107 of the Town and Country Planning Act (as amended) provides for compensation to be paid to the developer if a planning consent is revoked.
48. Compensation may be claimed for any plans and preparatory work relating to the development after the granting of planning permission. It can also include any works undertaken on site. More significantly, compensation can also cover the change in land values resulting from revoking a planning permission.
49. In this context, Members need to note that the Council previously revoked planning permission for a slurry pit at Prestwood Farm, Ryde. The compensation that the Council had to pay in this instance was around £500,000.

EVALUATION

50. The council is seeking to ensure that where planning consents have been granted, particularly in respect of new homes, that developers are encouraged to complete schemes as quickly as possible. There is concern that a high number of unimplemented planning approvals may dissuade developers from coming forward with new proposals given the constrained island housing market. Members are also concerned about the potential visual amenity implications of undeveloped sites.
51. Whilst revocation of planning consents is a tool open to any LPA the use of this power does come with inherent risks, specifically, financial costs where any consent is revoked and the IWC were liable for some £500,000 when using this power as

described in para 50 above. As such this power is rarely applied by LPA's and if used may have the opposite effect and dissuade some developers and landowners from pursuing schemes

52. Whilst there may be instances where the LPA may wish to enact its powers of revocation this is a course of action that should only be used in very specific circumstances and where the risk to the council are clearly understood and mitigated.
53. Given Members concerns about the visual and amenity impact of undeveloped sites (albeit with planning consent), it would be a simpler process to commence S215 Notices on the basis that this will give the developer an immediate incentive to act on the site or risk the reputational damage that will occur if they do not comply and the Notice progresses to the Courts. Revocation of the planning consent could therefore be considered the next step if the development is not subsequently progressed.
54. Members also need to be aware of the work undertaken in recent years to build good working relationships with developers and the implications proposing a "revocation" policy may have on this. In addition, there are tools being developed within the Island Planning Strategy that provide means of intervening when developers do not progress planning permissions.

RECOMMENDATION

55. Option 3 – to adopt a two-tiered approach to the non-development of sites with planning consent.
 - (a) Progress via Section 215 Notice to ensure that [i] the amenity of the site is improved and [ii] an incentive is thereby given to the developer to implement the planning consent;
 - (b) Initiate revocation processes if (a) above fails using the criteria outlined in Option 1 above (or as amended by Cabinet in Option 2)
56. That the planning case for any consideration of revoking a planning consent is considered by Planning Committee and then referred to Full Council for final approval.

BACKGROUND PAPERS

57. [T and CP Act 1990](#)
58. [Consultation Draft Island Planning Strategy](#)

Contact Point: Paul Barton, Interim Head of Planning & Infrastructure Delivery,
☎ 821000 e-mail paul.barton@iow.gov.uk

CHRIS ASHMAN
Director of Regeneration

(CLLR) BARRY ABRAHAM
Cabinet Member for Planning and Housing