Publicity for Planning Application

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- This note describes the statutory publicity requirements before a planning application can be determined.
- When an application has been approved without the proper publicity requirements, it is possible to complain to the local Government Ombudsman, who might pay a modest amount of compensation in certain cases, but not revoke the planning consent.
- The Labour Government required local authorities to publicise applications on the internet. However, they did not remove the obligation to advertise applications in local newspapers as well.

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1 The statutory requirements under planning law

The statutory requirements are laid down in the *Development Management Procedure (England) Order 2010* (SI 2184). (EIA=environmental impact assessment)

13 Publicity for applications for planning permission

(1) An application for planning permission shall be publicised by the local planning authority to which the application is made in the manner prescribed by this article.

(2) In the case of an application for planning permission for development which—

(a) is an EIA application accompanied by an environmental statement;

(b) does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated; or

(c) would affect a right of way to which Part 3 of the Wildlife and Countryside Act 1981 (public rights of way) applies,

the application shall be publicised in the manner specified in paragraph (3).

(3) An application falling within paragraph (2) ("a paragraph (2) application") shall be publicised in accordance with the requirements in paragraph (7) and by giving requisite notice—

(a) by site display in at least one place on or near the land to which the application relates for not less than 21 days; and

(b) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated.

(4) In the case of an application for planning permission which is not a paragraph (2) application, if the development proposed is major development the application shall be publicised in accordance with the requirements in paragraph (7) and by giving requisite notice—

(a)

(i) by site display in at least one place on or near the land to which the application relates for not less than 21 days; or

(ii) by serving the notice on any adjoining owner or occupier; and

(b) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated.

(5) In a case to which neither paragraph (2) nor paragraph (4) applies, the application shall be publicised in accordance with the requirements in paragraph (7) and by giving requisite notice—

(a) by site display in at least one place on or near the land to which the application relates for not less than 21 days; or

(b) by serving the notice on any adjoining owner or occupier.

(6) Where the notice is, without any fault or intention of the local planning authority, removed, obscured or defaced before the period of 21 days referred to in paragraph (3)(a), (4)(a)(i) or (5)(a) has elapsed, the authority shall be treated as having complied

with the requirements of the relevant paragraph if they have taken reasonable steps for protection of the notice and, if need be, its replacement.

(7) The following information shall be published on a website maintained by the local planning authority—

(a) the address or location of the proposed development;

(b) a description of the proposed development;

(c) the date by which any representations about the application must be made, which shall not be before the last day of the period of 14 days beginning with the date on which the information is published;

(d) where and when the application may be inspected;

(e) how representations may be made about the application; and

(f) that, in the case of a householder application, in the event of an appeal that proceeds by way of the expedited procedure, any representations made about the application will be passed to the Secretary of State and there will be no opportunity to make further representations.

(8) Subject to paragraph (9), if the local planning authority have failed to satisfy the requirements of this article in respect of an application for planning permission at the time the application is referred to the Secretary of State under section 76A (major infrastructure projects) or 77 (reference of applications to Secretary of State) of the 1990 Act, or any appeal to the Secretary of State is made under section 78 of the 1990 Act, this article shall continue to apply, as if such referral or appeal to the Secretary of State had not been made.

(9) Where paragraph (8) applies, when the local planning authority have satisfied the requirements of this article, they shall inform the Secretary of State that they have done so.

(10) In this article—

"adjoining owner or occupier" means any owner or occupier of any land adjoining the land to which the application relates;

"EIA application" has the meaning given in regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (interpretation), and "environmental statement" means a statement which the applicant refers to as an environmental statement for the purposes of those Regulations; and

"requisite notice" means notice in the appropriate form set out in Schedule 3 or in a form substantially to the like effect.

(11) Paragraphs (1) to (6) apply to applications made to the Secretary of State under section 293A of the 1990 Act (urgent Crown development: application) as if the references to a local planning authority were references to the Secretary of State.

Members of the public also have rights under the *Local Government (Access to Information) Act 1985*, which amends the *Local Government Act 1972*. The *Planning Encyclopedia* notes that this strengthens the hand of anyone searching for more information in a planning case.

> He now has access to meetings of the planning authority and to committees and sub-committees of the Authority (1972 ss. 100A and 100E), to agendas and connected

reports (ibid. 100B); to minutes and other documents prepared after the conclusion of meetings (ibid. s.100C); to inspection of background papers (ibid s.100D) and the register of additional information to be prepared and maintained by the authority (ibid. s.100G). All the aforementioned documents must be open to inspection at all reasonable hours at the offices of the authority (ibid. ss.100C and 100D) usually without payment (ibid. s.100H). A member of the public may make copies or extracts from the documents without payment (ibid. s.100H(2)) or can require to be supplied with a photographic copy or extract on payment of a reasonable fee (ibid s.100H).[1]

2 Reviews of the Publicity Requirements for Planning Applications

In June 2004, the ODPM published a study entitled: *A Review of the Publicity Requirements for Planning Applications*.[2] Many of the recommendations were concerned with replacing a manual method of publicity by an electronic one, making use of the internet.

The Killian Pretty review of planning applications reported in November 2008. The aim of the review was to investigate the opportunities for improving the planning application process for the benefit of all involved. It returned to the question of publicity. Here is the recommendation and the Government response:

Recommendation

Local authorities should be given greater autonomy and flexibility to determine the best approaches to use in order to notify the public about planning applications, thus allowing them to decide whether to use local newspapers.[3]

The Labour Government consulted on this option and published its response in December 2009. They decided not to allow local planning authorities to dispense with advertisements in newspapers;

Amendment 1

The Government has decided to introduce a new requirement to publish information about planning decisions on local authority websites. It is clear from the consultation responses that this is something that many councils do already. Officials will discuss with the LGA how this can best be achieved in an efficient way and effective way, in the light of consultation responses.

Amendment 2

The Government has decided not to take forward this amendment. This means that the statutory requirement to publish certain applications in newspapers remains. It is clear from the responses that some members of the public and community groups rely on the statutory notices in newspapers to learn about planning applications in their area. The Government is not convinced that good alternative arrangements can be readily rolled out.

Amendment 3

The Government has decided to implement the amendment to extend the statutory period for display of site notices on certain applications for listed building and

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1 Sweet & Maxwell Encyclopedia of Planning Law and Practice, 1-078
2 Arup for ODPM, *Review of Publicity Requirements for Planning Applications*, 2004
3 DCLG, Government Response to the Killian Pretty Review, 5 March 2009

conservation area consent to 21 days, to bring these in line with arrangements for site notices for planning applications.[4]

3 What happens when a planning application has not been publicised?

In certain cases it may be possible to complain to the Local Government Ombudsman that the failure to undertake publicity amounted to maladministration. The following case illustrates their approach:

> Carlisle City Council (04/C/13744)
> *Maladministration causing injustice*
> 'Mr and Mrs Callahan' (not their real names) complained about the Council's handling of a planning application for a substantial extension to their neighbour's home.
>
> The Council accepted that it had failed to notify the Callahans, who occupied the property most affected by the proposed development. It explained that the error arose from misinterpreting the house numbering and street names where the turning heads of two cul-de-sacs converged. However, the onus was on the Council to ensure consultation and that notification was properly conducted. This it failed to do and that was maladministration.
>
> There were other significant failures in the procedure followed by the Council, and as a result the Council has now modified its procedures in a variety of ways from the initial validation of new applications. The Ombudsman commended the Council for reviewing and amending its procedures to remove, as far as is reasonably practicable, faults and failures in the planning process caused by human error.
>
> The Ombudsman recommended that the Council pays £500 to Mr and Mrs Callahan towards their expense in moving home and for their time and trouble in pursuing their complaint.
> *16 January 2006*

In some cases the Ombudsman decides that the decision would have been different if the application had been properly publicised. Even that would not overturn the planning decision although it might lead to more compensation being payable.

[4] DCLG, Publicity for planning applications; summary of responses, 21 December 2009