

**Decision Session – Executive Member for
Transport and Planning**

9 February 2017

Report of the Assistant Director for Planning and Public Protection.

EPetition: Ownership of Property and Land in York Plans

Summary

1. This report outlines the approach proposed, to respond to an EPetition, (following initial consideration of the EPetition at the Local Plan Working Group on 5th December 2016), entitled ‘Ownership of Property and Land in York Plans’, which was submitted by lead petitioner, Geoff Beacon on 10th July 2016 (this was subject to a further wording amendment by the petitioner).

Recommendations

2. It is recommended that the Executive Member:
 - (i) notes the content of the EPetition and agrees the recommendation, based on Option 1 - to continue to publish the identity of landowners (but excluding individuals) through the Local Plan and Development Management processes, in accordance with its current practices, which are within the scope of the Data Protection Act and the Council’s Adopted Statement of Community Involvement

Reason: To ensure that the Council does not breach the requirements of the Data Protection Act.

Background

3. The EPetition was submitted to the Council on 10th July 2016 (but was subsequently subject to a wording amendment by the petitioner) and ran from 8th August 2016 until 29th September 2016. The amended petition stated:

“We the undersigned petition the Council to do the following:

When proposals for the development of land and/or property are made in York, we petition the Council to publish the identities of the owners and beneficial owners when the enhanced value given by the grant of planning permission is estimated to exceed one million pounds. For such proposals, estimates of the value of the granted planning permission should be published and the dates at which the ownership and beneficial ownership commenced or when options were purchased.”

4. A full copy of the EPetition and details of signatories are shown in Annex A to this Report.
5. The Council’s guidance on petitions / EPetitions requires that where they contain more than 10 signatories, they must be added to the Council’s Petition Schedule and considered by the Executive Member at a Decision Making Session where relevant. As the EPetition has 14 signatories on it, it has been entered on the Council’s Petition Register, to be dealt with through the relevant process.
6. The EPetition is aimed at publishing the identities of owners and beneficial owners of land when the estimated value exceeds one million pounds, through the granting of planning permission, or when options were purchased on the land in question.
7. The EPetition was reported to the Local Plan Working Group on 5th December 2016, where it was noted and it was agreed that it should be referred to the Executive Member for Transport and Planning to be considered at a future Decision Session.

Options

8. The following options are available for the Executive Member to consider:

Option 1: to continue to publish the identity of landowners (but excluding individuals) through the Local Plan and Development Management processes, in accordance with its current practices, which are within the scope of the Data Protection Act and the Council’s Adopted Statement of Community Involvement; or

Option 2: Ask officers to explore an alternative approach in terms of making the information available, within the remit of the Council's Data Protection duties.

Analysis

9. The EPetition refers to both proposals to develop land and the granting of planning permission. Consideration has therefore been given to the information that could be made available in both the Local Plan process and separately, the planning application process. The Data Protection Act restricts publication of personal information unless there is a statutory duty to publish the personal information that would override the Act.
10. The Local Plan process includes the submission of land bids for consideration as potential development site allocations in the Local Plan. This does not in itself grant planning permission. Planning applications are determined separately following the statutory process for determining applications, which includes public consultation. The determination of planning applications will not necessarily be at the same time as the Local Plan adoption.

Local Plan Process

11. Through the site selection process of the emerging Local Plan, the Council requires that all land bids submitted for consideration have a willing landowner. In 2012, the Council undertook an initial Call for Sites exercise, for the emerging Local Plan. This Call for Sites invited landowners and agents to submit potential sites for consideration. Contact was through individual landowners and / or agents who represented their clients' interest, or acted as a sole point of contact for more complex sites which have multiple landowners or consortiums. The Council received 293 individual site submissions to the Call for Sites. The representations made to the 2012 Call for Sites exercise are not available to view online, but the Council can provide copies of specific representations, on request, with personal information redacted, to comply with the Data Protection Act.
12. In addition, the Council has undertaken further public consultation exercises for the Preferred Options Draft (Statutory stage) of the emerging Local Plan (from 5/6/13 to 31/7/13), together with public consultations on the Further Sites (4/6/14 to 16/7/14) and Preferred Sites documents (18/7/16 to 12/9/16) – both non-statutory stages. At

each of these stages, copies of the responses, including submissions of land bids, have been made available online through the Planning Access section of the Council's website, with personal information redacted where appropriate. The summaries and comments received to these stages can be viewed here:

https://www.york.gov.uk/info/20051/planning_policy/713/new_local_plan_consultation

13. As there is no statutory duty at these stages of the Local Plan process to make available personal data that would override the requirements of the Data Protection Act, personal information must not be disclosed. Consequently, for any submissions received on the Local Plan and submitted Local Plan sites, the personal details of individuals are redacted before being placed online, to conform with Data Protection requirements. Details of agents and commercial organisations falling outside this requirement are, however, not redacted and have been made public.
14. In providing the redacted representations online the Council already exceeds the requirements of the Council's Statement of Community Involvement (Adopted December 2007), which only commits the Council to produce reports which provide feedback on Local Plan consultations and respond to issues raised, and publish these reports on its website. The availability of redacted representations online is as a result of a previous request from Members to ensure that the information is as widely available as possible and the community understands the background and reasons for Local Plan decisions at an early stage in the process.
15. Through the Local Plan process, the Council undertakes a viability assessment to assess the viability and deliverability of the Local Plan. This is in line with the National Planning Policy Framework (NPPF) which requires Local Authorities to ensure that the cumulative effects of policy do not combine to render plans unviable. It states:

'Plans should be deliverable. Therefore the sites and the scale of development in the Plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened' Para 173 (NPPF).
16. National Planning Practice Guidance (NPPG) recognises that consideration of land value is central to the viability assessment and that

the most appropriate way to assess land or site value is to ensure that land value assumptions reflect the emerging policy requirements and policy obligations and allow a competitive return to willing developers and landowners. NPPG recognises that the return will vary between projects to reflect the size and risk profile of the development. It states that:

‘A competitive return is the price at which a reasonable landowner would be willing to sell their land for development. The price will need to provide an incentive for the landowner to sell in comparison with other options available. These options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy’.

The emerging Local Plan is underpinned by a Local Plan Viability Assessment (LPVA) undertaken by consultants Peter Brett Associates (PBA).

17. The LPVA uses a residual method approach where the residual value is what the site should be worth once it has full planning permission. The residual value calculation requires a range of inputs or assumptions including the costs of development and the required developer /landowner return. This residual value calculation has been undertaken for emerging strategic and non strategic allocations in the Local Plan to date and further details of the methodology can be found in section 4 of the report. Section 5 of the report provides details on establishing the residual land value and comparing this with a benchmark land value for York. The benchmark land value is the value at which a willing and reasonable landowner would sell to a prospective developer. This will vary to reflect landowner judgement and for the purposes of the report a central benchmark value is assumed using data from the Valuation Office (VOA). Further work will be undertaken on viability and deliverability to support the emerging Local Plan as it progresses towards the Publication stage. The 2014 City of York Local Plan Viability Study (undertaken by Peter Brett Associates, September 2014), can be viewed at the following link:

https://www.york.gov.uk/downloads/file/2091/local_plan_viability_study_-_draft_report_2014pdf

Planning Application Process

18. In terms of the granting of planning permission, land ownership details are shown on the application form. If the landowner is the applicant, then

he or she would fill in the 'Applicants' section and Certificate 'A' on the form, to clarify that they own the land. However, if the applicant was not the landowner, then he or she would need to sign Certificate 'B' on the application form and list the landowners, to clarify that they had served notice on the landowner. This information would form part of the 'Public Register' of planning applications, and the Council makes this information available online as part of the planning application process.

19. This information would remain available to view online until a decision is made on the application. At that point, the application form would be removed from the website, for data protection reasons.
20. In light of the already available information and the Data Protection duties it is not recommended that the Council publishes information identifying individual landowners where the enhanced value of land following the grant of planning permission exceeds one million pounds. Option 1 is therefore recommended.
21. If Members seek to further explore the publication of the information and Option 2 were to be agreed, further advice from the Council's Legal Team and Information Governance Team would need to be sought, to ensure that any approach proposed would not result in the Council being in breach of its Data Protection Act duties.

Next Steps

22. If option 1 is agreed, the Council will continue to publicly identify landowners (but excluding individuals) through the Local Plan and Development Management processes, in accordance with its current practices, which are within the scope of the Data Protection Act and the Council's Adopted Statement of Community Involvement.

Council Plan

23. The course of action outlined above accords with the following priority from the Council Plan:
 - **A council that listens to residents**

Implications

24. The following implications have been assessed.

- **Financial** – None;
- **Human Resources** - None;
- **Community Impact Assessment** – None;
- **Legal** – Legal advice has been sought on the issue of making public the names of landowners who are private individuals as this would be personal information, and disclosure could be in breach of the Data Protection Act.

Risk Management

25. In compliance with the Council’s Risk Management Strategy, it is considered that there is a risk associated with making public the names of landowners / private individuals as this is personal information, and could be in breach of the Data Protection Act.

Contact Details

Author:

Martin Grainger
Head of Strategic Planning
Tel: 551317

John Roberts
Assistant Development
Officer (Forward Planning).
Tel: 551464

Chief Officer Responsible for the report:

Mike Slater
Assistant Director for Planning and
Public Protection

Tel: 551300

Executive Member Responsible for the Report:

Cllr I Gillies

**Report
Approved**



Date 25/1/17

Specialist Implications Officer(s):

Alison Hartley, Senior Solicitor, Planning

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

Brief Guide to dealing with Petitions.

Glossary of Abbreviations

None

Annex A: E Petition entitled 'Ownership of Property and Land in York Plans'