

## **Agenda Item 7**

**Development Management Committee**

**20 October 2009**

**SB**



### **Progress report on Quality Parish and Town Councils dealing with applications relating to Advertisements and Trees**

#### **Summary**

This report sets out the experience so far in the devolution of powers for Quality Councils to deal with tree and advertisement applications. It looks at the procedures and processes involved, the impact on the Council's planning and countryside services, sets out issues which have arisen, and proposes a way forward.

#### **Recommendations**

- 1 Exmouth, Honiton, and Sidmouth Quality Councils are invited to continue to deal with Advertisement Consent applications on an indefinite basis subject to the District Council retaining the right to bring these powers back in house at any future time should they wish to. EDDC will no longer provide advice on individual applications other than through its Conservation Officers in respect of allied applications for Listed Building Consent. These Quality Parishes to be given 25% of the Advertisement Consent application fee submitted.**
- 2 Talaton and Dunkeswell Quality Councils are subject to further review following any advertisement consent applications they have dealt with. EDDC will continue to provide advice when required. The fee contribution be kept at 5% until these Councils have dealt with a number of applications and demonstrated capability.**
- 3 In respect of Advertisement Consent applications Exmouth, Honiton and Sidmouth Quality Councils are asked to bear the costs of any appeals arising out of unreasonable decisions or behaviour when dealing with the application. Quality Councils to be responsible for responding to appeals whilst the District Council will continue to deal with the relevant paperwork.**
- 4 Quality Councils are invited to continue to deal with tree related applications until a further study under the Systems Thinking approach has been undertaken and the results of the exercise reported to a later Committee. EDDC Officers to continue to provide reports and advice on individual applications.**
- 5 Any new Quality Councils are invited to take on these powers for a 12 month experimental period following any training that may be required. A further report to be presented at the end of that 12 month period. Existing Quality Councils to be invited to attend any future training events.**
- 6 The action points contained within the minutes of the 13 July 2009 meeting be taken forward**

**a) Reasons for Recommendation**

As part of the Government agenda of allowing local decision making it is considered appropriate to allow Quality Councils the ability to deal with these applications.

**b) Alternative Options**

To retain all powers in house

**c) Risk Considerations**

Awards of costs will be reduced under the proposals set out above. If this is not agreed the District Council may be liable to this risk where decisions are inconsistent or the Quality Council has been unreasonable. There are also more significant risks in relation to tree applications both regarding costs on appeal and liabilities should the wrong decision be made.

**d) Policy and Budgetary Considerations**

Loss of 25% of fee income for a limited number of applications. No other policy implications.

**e) Date for Review of Decision**

On completion of Systems Thinking review of Countryside Services and following a 12 month period for any new Quality Councils or from when any Quality Council deals with its first application.

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**1.0 Background**

- 1.1 In November 2007 the then Development Control Committee resolved to delegate responsibility for dealing with Advertisement Consent applications and applications in relation to works to trees within Conservation Areas and works to trees covered by Tree Preservation Orders, to Quality Parish and Town Councils.
- 1.2 The original Quality Councils were Dunkeswell, Exmouth, Sidmouth and Talaton with Honiton joining soon afterwards. Members are referred to the original report and minute of the meeting which is appended for information. Members at this point might also like to note that Budleigh Salterton Town Council was awarded quality status in June this year. A letter has already been sent by the Head of Planning and Countryside congratulating them and drawing their attention to the potential for them to also take on trees and advertisement applications. It is suggested that a copy of this report is sent to them as well as existing Quality Councils and that they too be invited to attend the next meeting.
- 1.3 Following the resolution to devolve these powers the Development Manager and the Council's senior arboricultural officer put together a training programme which involved some face to face training with the Quality Councils and the production of a detailed booklet setting out the legislation, principles and best practice as well as the general procedures to be adopted, officer report template and a selection of sample reports and earlier appeal decisions on advertisements. In addition a PowerPoint presentation was given with paper copies distributed showing good and bad examples of advertisements throughout the district. This training took place at the end of 2007 and further training in 2008 with the first applications dealt with by Quality Councils in the Spring of 2008. A full year has now elapsed with all Quality Councils and this report sets out progress made, problems encountered, and potential courses of action for the future.

**2.0 Processes involved**

- 2.1 The actual process involved with the Quality Councils has taken the form of EDDC receiving the relevant application, ensuring the application is valid and has the appropriate fee, putting the application into a file, carrying out any necessary consultations with statutory consultees such as the Highway Authority, placing statutory advertisements in local newspapers (where they involved Conservation Areas and Listed Buildings) and then passing the paper file direct to the Quality Council for them to put up a site notice, carry out a site visit to assess the

proposal, put the matter before their Council meeting and make a resolution. Following that resolution the file was then passed back to the planning department of EDDC together with an officer report from the Quality Council which would include the formal decision setting out any reasons for refusal or conditions on approval. The decision would then be issued by EDDC.

- 2.2 In the case of Advertisement Consent applications the planning department would not provide any officer report or advice to the Quality Council (as this had been provided as part of the training programme). In the case of applications relating to trees however and given the technical knowledge that is required it has been the practice that the EDDC tree officer would provide a detailed report and recommendation to the Quality Council having been on site and assessed the application. The Development Manager together with other senior planning officers did agree to provide verbal advice and support when necessary to all Quality Councils if they were ever unsure as to an appropriate course of action over the first year of the scheme's introduction.
- 2.3 In addition the refusal of any applications may have triggered an appeal. In this respect it was agreed that EDDC would deal with all the paperwork in relation to any appeal but that the file would then be passed to the Quality Council who would provide any written statement or appear at any inquiry. It was also agreed at the time that in the event of costs being awarded at appeal for unreasonable behavior that EDDC would initially bear those costs. The first appeal has now been received at the end of September 2009 relating to an application for Advertisement Consent and LBC.
- 2.4 Finally in the case where an Advertisement Consent application involved a building which is Listed as being of architectural and/or historic importance it was agreed that EDDC would retain control over the LBC application but that the Quality Council would deal with the allied Advertisement Consent application taking advice from EDDC's Conservation Officers.
- 2.5 Quality Councils in the case of Advertisement Consent applications have also been encouraged to deal direct with applicants and their agents if they have concerns about a particular sign proposal to seek amended plans. Those amended plans should however be received by the Quality Council with a copy at the same time to the District Council. Again Officers have provided advice where such amendments are being sought as to whether they are reasonable or not.
- 2.6 There have been no firm pre application advice proposals set out as part of any protocol.
- 2.7 The number of applications in each category is set out below

#### ADVERTISEMENT AND TREE APPLICATIONS RECEIVED AS AT 23 September 2009

Parish	Advertisements	Trees
Dunkeswell	0	16
Exmouth	18 (13 approvals, 2 refusals, 1 split, 2 pending)	26
Honiton	10 (8 approvals, 1 refusal, 1 pending)	0
Sidmouth	8 (2 approvals, 3 refusals, 3 pending)	68
Talaton	0	0

- 2.8 Some of the Quality Councils i.e. Sidmouth and Honiton have grasped the opportunity to deal with advertisements with vigour and have produced their own informal design guidance (in consultation with the Development Manager and Conservation Officers) which they have then published and distributed to businesses in their towns. Exmouth Town Council are interested in doing the same. These documents are informal only and do not carry the same weight as the Development Plan policies contained in the EDDC Local Plan, but are nevertheless useful

tools to raise awareness of the issue in their towns and to encourage a better quality of advertisement. Some Councils are also now trying to tackle the problem of A boards on pavements which can be a hazard to particular members of the community.

- 2.9 With regard to tree applications Honiton Town Council have resolved they do not wish to take on these powers.

### **3.0 Problems encountered – Advertisement Consent applications**

- 3.1 The principal areas of difficulty have centered on quality Councils being unsure as to what are the relevant material considerations when dealing with applications, to poor quality officer reports, and poor drafting of decisions for approval and refusal.
- 3.2 It has been the case that for most applications dealt with by the Quality Councils the Development Manager and other senior colleagues have needed to guide the decision to a more reasonable outcome. On occasion this has resulted in considerable officer time being spent on the telephone and sometimes in person and in writing with the relevant clerks to guide the decision. Officers have been keen to stress that the final decision does rest with the Quality Council but that if they were to persist in their intended recommendation they may well have difficulties on appeal and could be on some occasions be accused of being unreasonable.
- 3.3 In terms of material considerations these are simply matters of highway safety and local amenity i.e. impact of the sign on the character and appearance of an area, taking into account Conservation Areas and Listed Buildings that may be affected. There have been occasions where some businesses have put forward reasonable signage proposals but Quality Councils have sought to refuse those applications because of the type of business being operated. Two examples spring to mind in the case of adult gaming establishments where the nature of the use tended to colour the judgment of Quality Councils.
- 3.4 Likewise in terms of highway safety on occasion Quality Councils have sought to refuse applications where there have been no objections from the Highway authority. Again this runs the risk of a successful appeal and planning officers have had to advise that recommendations ought to be amended.
- 3.5 Significant difficulties have been encountered in terms of the 'officer' report. These reports should follow the template provided by EDDC as part of the training pack and filled in appropriately. The report is a key document in terms of justifying the decision and is used by the planning inspectorate in any appeal. It therefore needs to be of reasonable quality and needs to demonstrate how the decision has been arrived at. Given the lack of experience of quality councils in dealing with these matters it is understandable that the reports have had to be sent back on many occasions to be filled in at all or to be completed properly. (See below for future proposals). Again this has resulted in time being spent both by planning officers and administration staff to ensure the reports are of a reasonable quality.
- 3.6 Similarly the reasons for refusal and conditions for approval have on the majority of occasions had to be amended and sent back for re working. Some of the reasons for refusal and conditions would not have been precise enough or legally phrased. Quality Councils have all been provided with a list of standard conditions to apply and samples of previous officer reports which they can use as a 'template' in framing any non standard conditions. Similarly reasons for refusal must be tightly worded clearly setting out the harm caused and the relevant policy objections. Again all the policy documents have been forwarded to them for information.
- 3.7 There have also been difficulties where the Advertisement Consent application is connected to an allied application for Listed Building Consent. This has meant a necessary dialogue between the Parish clerk and the Conservation Officer dealing with the LBC application to ensure a consistency of approach. There are issues here in terms of time periods for the Conservation Officer to comment back to the Quality Council but on the whole this has been handled reasonably well and the Quality Councils have been able to receive the advice of the

Conservation Officer before arriving at a decision. There have been some instances when a decision has been taken without the advice of the Conservation Officer. On one occasion the original decision of the Quality Council was remitted back by the clerk and a different conclusion was arrived at.

- 3.8 On the positive side the Quality Councils have always been willing to take professional planning officer advice and have amended their reports when asked to do so. Whilst it may be argued by some Quality Councils that they feel they are being guided and led too much by officers this has been done with a sense of trying to protect the Quality Councils from unreasonable or unsound decisions.

#### **4.0 Problems encountered – tree applications**

- 4.1 The comments of the Council's senior arboricultural officer are set out below.
- 4.2 In general the "Quality Council" system works reasonably well within the limitations of the overall "Tree Applications" process. The Parish Councils seem to appreciate our role and value our reports; hopefully this gives them greater confidence in our work when we are engaged in other areas of the Services work.
- 4.3 That having been said we will soon be reviewing the systems and protocols for the delivery of the "Tree Applications" and "Tree Preservation" processes. The outcome of which will hopefully be a more efficient process with revised delegation procedures and streamlined reports. There will be a need for the Quality Council process to be similarly reviewed if it is not to become unduly demanding in terms of officer time taken in preparing detailed reports for the councils.

#### **Issues**

- 4.4 There is a potentially inherent problem with the 28 day consultation period failing to coincide with the cycle of council meetings and the 6 weeks to determine Conservation Area notifications (e.g. A notice is received in week 1 of a councils 4 week cycle of meetings, the next council meeting will occur before the 28day consultation period has elapsed and the subsequent council meeting will occur after the 6 week determination period).
- 4.5 There have been a few local anomalies (i.e. trying to attach replanting conditions to Conservation Area consents, and determining applications at the next available committee meeting, irrespective of whether the consultation period has elapsed) to iron out, with further communication and advice this should be resolved.
- 4.6 There have been two occasions when the determining Council have gone against the recommendations of the Arboricultural Officer's report. In both cases this has resulted in consent for the felling of trees which had been recommended for refusal. Potential problems in these circumstances are, either the opportunity is lost to secure a replacement tree by condition, or that an inappropriate (no space, wrong species, wrong location) condition is imposed. The making of conditions can result in an appeal being lodged against the Council's decision. To date, the situation has not arisen where the determining Council has refused an application, against the Arboricultural Officer's recommendation for consent. The implications of this course of events are significant.
- The applicant may lodge an appeal against the decision.
  - The council is liable for any claims for damages over the value of £500 that result from failure of, or are directly caused by, the tree or parts of it that were identified as being defective or causal in the initial application. This liability extends for a period of 12 months from the date of the decision.

- The parties in an appeal normally meet their own expenses. However, for all appeals made on or after 6 April 2009, irrespective of the procedure used to determine the appeal, both the LPA and the appellant can apply for an award of costs on the grounds of the others party's unreasonable behaviour which causes unnecessary expense. (Tree Preservation Orders – A guide to the Law and good practice addendum – May 2009)

### **Impact on Service delivery**

- 4.7 The two week target for reporting to the councils is achievable but does have a knock on impact on delivering targets in other work areas. The 28 day period for wider consultation response does give a bit of leeway for overrun, but this impacts on the available time for the council's committee members to consider the application prior to their meetings.
- 4.8 Further increases in the number of Quality Councils will have an impact on the flexibility and ability to manage and meet targets for other areas of work. The recent addition of Budleigh Salterton to the system will add between 20 and 30 applications per year, this is a significant incremental increase.

### **Conclusion on tree applications**

- 4.9 The trial of the Quality Council system has demonstrated that there are alternative ways of determining TPO applications' and Conservation Area s. 211 notices; this has not been without problems, some of which have yet to be resolved, whilst others relating to capacity have yet to be tested.
- 4.10 The wider adoption of the system must be considered with due regard to the efficient delivery of broader service objectives and the role of the whole Arboricultural Service. Any future review will need to recognize the importance of an informed and "local" input into the process, for which there may be other means of delivery. Until the outcome of this review is known, I believe it would be premature to make the current trial arrangements permanent.

## **5.0 Quality Council response**

- 5.1 The Development Manager held an informal meeting on the 13 July 2009 to seek the views of the Quality Councils. This was attended by all the Quality Town Councils but not Dunkeswell or Talaton as they had not dealt with any advertisement applications. The minutes of the meeting are set out below.

### **Present**

*S Belli, Ed Freeman, Andy Carmichael*

*Lyn Hargood, Trina Jarrett and John Wokersien – Town Clerks of Honiton, Sidmouth and Exmouth, Sue Cody – Office manager at Exmouth*

*Dunkeswell and Talaton did not attend as the meeting was specifically seeking feedback on those applications dealt with.*

*SB presented stats for how many applications had been dealt with since the delegation of the powers to deal with trees and adverts as follows*

<i>Exmouth</i>	<i>15 Adverts</i>	<i>17 Trees</i>
<i>Honiton</i>	<i>8 Adverts</i>	<i>0 Trees (declined to take on this power)</i>
<i>Sidmouth</i>	<i>5 Adverts</i>	<i>63 Trees</i>
<i>Dunkeswell</i>	<i>0 Adverts</i>	<i>14 Trees</i>
<i>Talaton</i>	<i>0 Adverts</i>	<i>0 Trees</i>

*It was clear to us that there were issues arising out of the processing of advert applications and these were set out as follows*

- *Incomplete and inadequate reports, with very little information in the planning consideration and assessment sections*
- *Lack of joined up responses when an allied LBC application involved*
- *Reasons for refusal and reasons for non standard conditions were inadequate*
- *Time being spent going back and forth between Town Clerks and planning managers explaining the justification for a refusal etc and trying to get the Clerks to beef up their reports and justify their decisions properly in the reports and in some cases to re-consider their resolutions because they ran the risk of a successful appeal and on some occasions an award of costs.*

***In response the Town Clerks raised the following points***

- *They were not professional planners and Town Clerks shouldn't be so regarded*
- *There are resource implications – delegation of powers but no extra resources for TCs*
- *Information coming from us was inconsistent – for example one Council no longer receive the application files, whereas the other two Councils still receive the file*
- *One council would prefer to see an officers report sent to so that their Members could base a decision on sound advice rather than do this work themselves*
- *They were unsure about the policies applicable and how this should be incorporated into reports*
- *The report template itself was not particularly helpful*
- *They were not receiving consultation responses promptly*
- *They were struggling to fill in the officers report form*
- *There were different approaches with some TCs giving their Councils a recommendation, some giving them just the facts and the other giving them nothing in written form but advising at the Council meeting.*
- *Definite falling between two stools with LBC applications and Advert applications coming in at different times*

***In response we agreed to do the following***

- *Ensure that in future the actual application file is sent to all TCs for all teams. The file to contain all relevant notes on validation/1<sup>st</sup> assessment, history sheet , constraints information and fly sheet, and to have a note sheet attached to inside right hand cover of file wallet which the Clerks can make use of.*
- *When an Advert application was received ensure that the validation/1<sup>st</sup> assessment teams check if an allied LBC application will also be needed and if so to alert the applicant to this as well as the Conservation Officer. The Conservation Officer will then contact the Clerk and let them know informally what their views are likely to be on the Advert application as well as their views on the LBC application they will be dealing with at some future date.*
- *If an LBC application comes in for a sign the Validation/1<sup>st</sup> Assessment team check to see if Advert Consent will also be required. The Conservation Officers then would contact the Clerks*

*and let them know their informal views on their LBC application which the Clerks can keep on file for when they receive the Advert application.*

- We will revamp the Officers report template to make it more user friendly and look at wording it so that Clerks can follow a thought process of how any individual application should be dealt with which would then allow Councillors to be better informed when it came to making a decision*
- We would contact Highways to look at ways in which they could forward their comments direct by email to the relevant clerks. Also agreed to provide information relating to Standing Advice*
- We would ensure all consultee responses from neighbours and District Council ward members were sent on promptly and investigate if we could get those comments sent direct with us scanning them on receipt of the finished file. Agreed to look again at what the letters and site notices say on adverts about sending your comments direct to the Quality Council. There was an issue here in terms of confusion between this system and the system for notifying neighbours and doing site notices on planning applications. Didn't want to create a separate system for adverts if this ran counter to what was happening on planning applications. No objections were however raised to letters being sent direct (neighbour letters are after all few and far between on advert applications) and we could scan these letters at the end of the process on receipt of the finished file.*
- We will look again at the standard reasons for refusal and reasons for imposing non standard conditions*
- Conservation Officers would telephone the clerks as soon as they had initially assessed their LBC application with their informal views and if necessary follow up if this changes after a site inspection. If not available by telephone the Conservation Officers could email the Clerks with their views.*
- Ensure that a note was put on the decision notice in the case of a joint application for LBC and advert consent to make sure the applicant didn't jump the gun and put the sign up before they had a chance to deal with the Advert application.*
- Confirmed that we had no objections to the Clerks negotiating direct with applicants and their agents. Withdrawn elements of a scheme could be dealt with by email – with the clerks in their reports making it clear which elements of the scheme had been withdrawn. Any actual amended plans that were required would need to be sent to the DC offices planning teams who would distribute them promptly to the Clerks having ensured a copy was put on Part 1 of the planning register and a copy sent for scanning.*

### **Next Steps**

- 1. SB said he would be taking a progress report to the August Development Management Committee to share the above information with District Council Members and to suggest that further information is sent to the Clerks as soon as possible. SB's report will likely recommend a further period of 6 months with a further re-assessment after that time with a view to making the arrangement permanent.*
- 2. On the question of making resources available SB said this was unlikely but invited the Clerks to put forward their views on this matter.*
- 3. We raised the issue of appeal costs in the event of unreasonable behaviour on the part of the decision maker. A general discussion took place as to the likely level of those costs and the circumstances when they would be payable. We indicated that it was likely that TCs would have to bear any costs if delegation arrangement became permanent. We did confirm we*

would offer advice on the first few appeals but stressed that in the case of written reps it was only the officers report that would be sent – hence the fundamental importance of getting this document right.

4. A discussion took place as to why officers would not be providing reports on Advert applications. The majority view of Clerks was that there would be no point in the delegation if they were just going to follow an officer's report. All agreed that with more training and a revamped report template they should be better equipped to provide on each refusal at least a watertight report which supported the reasons for refusal in a meaningful way.
5. On the subject of trees Exmouth and Sidmouth were content to carry on with the system and whilst there had been some initial teething problems in getting an arb officer report these had now been resolved. A separate report section would be needed to deal with tree applications and this would be dealt with by our arb officers.

## **6.0 A way forward**

- 6.1 It is considered that it would be appropriate to extend the devolution of these powers to the Quality Councils on an indefinite basis for Advertisement Consent applications provided the District Council reserves the right to take the powers back 'in house' if they wish to do so in the future. A revised report template has now been devised and this will be sent to the Quality Councils together with a copy of this report. The Quality Councils will be invited to attend the Committee meeting at which time they will be able to comment on the report and put forward any additional views they might have. All the Quality Councils have expressed a desire to continue to deal with advertisement applications. All Quality Councils except Honiton have expressed a desire to continue to deal with tree related applications. It is recommended that further training be undertaken with any new entrants to the Quality Council 'family'. When that training is undertaken other existing Quality Councils will also be invited to participate to build up their level of expertise and experience in dealing with these applications. It is not recommended that Listed Building Consent applications be part of any devolved process. These will need to be retained in house as more specialist knowledge is required. It is further recommended that the action points listed in the minutes of the 13 July meeting are actioned where possible if not already done so.
- 6.2 With regard to fee income at the present time it has been agreed to provide the Quality Councils with a fee contribution of 5%. There have been 36 applications submitted resulting in a fee income of approximately £3420 over approximately an 18 month period (based on the standard fee of £95 per application). This equates to a very small number of about 24 applications a year with a fee income of £2280. Given that the District Council still needs to retain (for administrative purposes) the need to receive applications, and carry out administrative processes including advertisement in local newspapers on Conservation Area/Listed Building applications then it would be appropriate to retain the larger element of any fee income. However, it is considered that an increased contribution of 25% of the fee income could be transferred to the Quality Council (but only those who have dealt with applications over the period) with the other Quality Councils being retained at the present level subject to a performance review. A 25% contribution would result in a fee income loss to the District Council of approximately £570 per annum on current rates of application receipt and fee levels. This would be offset by reduced time being spent by planning officers in not having to visit sites, undertake report writing and any limited reports needed for appeals. It is also of course dependant on less senior manager time being spent on assisting Quality Councils in dealing with applications.
- 6.3 In terms of tree related applications there are issues to be resolved. As part of the Systems Thinking approach these issues will need to be considered further later this year and next. It is also true to say that when dealing with tree issues there are more fundamental concerns raised about costs and liabilities if a decision is taken which could be challenged. Tree applications are therefore not as straightforward. Officers suggest that the system continues

to operate as it does at present but in respect of trees this be reviewed later once all internal procedures and processes have been considered under a Systems Thinking review.

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### **Legal Implications**

The report identifies the relevant issues for Quality Councils in this devolution process; this includes the resource problem, liaison with District Council officers and issues over the relevant paperwork. The report is correct to distinguish between the differing work levels involved in handling advertisement consent and tree related applications, including the greater costs risk of the latter when at appeal. Reviewing these topics as part of Systems Thinking would appear to be a sensible and proportionate approach towards improvement.

### **Financial Implications**

The financial implications are indicated in the report.

### **Background Papers**

- Report to Development Control Committee dated 20 November 2007

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Steve Belli – Development Manager

Development Management Committee