

Publication of planning representations on the Council's website	Agenda No: 6
Corporate Priority: The Environment is Clean and Green	
Report presented by:	
Report prepared by: Tessa Lambert	
Background Papers:	Public
Options:	Key Decision:
To support or not support the recommended mitigation.	NO
Executive Summary:	
<p>The Council was recently the subject of a defamation claim against them. It concerned the content of a letter of representation on a planning application which the Council published on its website. The Audit Committee asked that the relevant service, Development Control, explore the introduction of new arrangements for handling representations on planning applications so that the risk of further claims would be reduced. The report makes recommendations for future arrangements.</p>	
Decision:	
<p>To support the introduction of a "pending file" arrangement for representations to enable Officers to vet their content before the material is published on the website.</p>	
Purpose of Decision:	
<p>To introduce arrangements which aim to reduce the risk of publishing third party defamatory statements on representations in respect of planning applications</p>	
Corporate implications [should be explained in detail]	
Financial:	Cost of software adjustment as set out in report
Legal:	Town & Country Planning Act requirements in relation to public access to representations. This arrangement aims to reduce the risk of publishing third party defamatory

	statements.
Equalities/Diversity	N/a
Customer Impact:	Objective to ensure range of means to access planning application material, including representations on planning applications
Environment and Climate Change:	N/a
Consultation/Community Engagement:	
Risks:	Current risk of defamation claims against the Council in respect of third party statements.
Officer Contact:	Tessa Lambert
Designation:	Development Control Manager
Ext. No.	2514
E-mail:	Tessa.lambert@braintree.gov.uk

Background

Members will be aware of the claim made in December 2009, in connection with an alleged defamation of character as a result of the contents of a letter of representation which was published on the Authority's website in respect of a planning application.

Members requested at the Committee Meeting on 15th April that offices investigate the introduction of a "pending file" which would allow officers to read and assess all letters of representation before being published on the Council's web page.

Current Situation

At present letters of representations received in the post are scanned, downloaded to the web page and then passed to the Case Officer. Letters of representation received as emails via the web site are classed as "public" and are automatically downloaded to the web site almost instantaneously. A copy is then printed off and passed to the Case Officer. In both cases representations appear on the Council's web page before they have been assessed by the Case Officer or an Area Manager. This process seems to be typical for other local planning authorities in Essex.

Changes required to introduce a "pending file"

It is not currently possible for electronic representations to be "held" until the contents have been assessed. To make this possible the software needs to be changed so

that the emails are treated, initially, as “sensitive”; once vetted, the emails would be re-classified as “public” and made available for viewing on the web site. The software providers have indicated that there would be a one off, non-negotiable fee of £900 for this adjustment. The same approach would apply to letters of representation which would go through the same vetting before being made available for viewing on the website.

In order to assess the impact of these changes, Officers have been running the “pending file” system as a trial, alongside the existing system. The trial has been running for just over a month. It has meant that electronic representations are now printed out and passed, together with letters of representation, to the Area Managers for vetting. Any letters with possible defamatory comments would either need to have the comments redacted or would not be scanned at all if their content would become meaningless once redacted. The Area Managers are undertaking the vetting daily so the vetted letters/emails are then ready for scanning / changing to “public” status the following day.

During the trial of the “pending file”, Area Managers have been able to complete the vetting each day. Vetting has taken around 10 minutes on average, each day, although the number of representations will vary. Two letters/emails have needed to be redacted which might otherwise have been missed.

Other adjustments made by the Service to mitigate the risk of future claims

The Service has reviewed the content of the letter advising neighbours of an application. This has been reworded so that it makes clear that any letters with potentially defamatory comments will not be published on the web page or considered as part of the decision making process. This is also repeated on the web page at the section where representations can be made online.

Conclusion and recommendation

This introduction of the “pending file” process of vetting and scanning will definitely take more time than the existing arrangement and will introduce more stages into the process. However, it will ensure that each letter is checked and, based on the trial, the adjustments are manageable and representations will still appear on the web page very early in the process (i.e around 1-2 days after receipt). Viewing letters of representation on the web page is very helpful to both applicants and neighbours. Since representations have been put on the web page there have been fewer phone calls or visits to the office to enquire whether any letters have been received or to view the contents of the letters.

The introduction of the “pending file” cannot eradicate the risk of a defamation claim because an Officer may judge that a statement is not defamatory whereas the “victim” may take a different view. Nevertheless, the costs in terms of funding and office time are not significant given the scale of risk. The Service considers that the investment in the changes to the software and in officer time would be worthwhile.