

Crawley Borough Council

Report to Governance Committee

5 March 2019

Constitutional Amendments for Development Consent Orders and Planning Performance Agreements

Report of the Head of Planning and Economy – PES/315

1. Purpose

- 1.1 This report proposes amendments to the Constitution to secure appropriate delegations for decision-making on responses to any Development Consent Order (DCO) applications, and to enter into Planning Performance Agreements (PPAs). These changes are required now to ensure the Council is in a position to make timely responses in accordance with strict statutory timescales and to secure additional resources should Gatwick Airport bring forward a DCO application.

2. Recommendations

- 2.1 To the Governance Committee:

The Committee is requested to recommend to the Full Council the approval of the following changes to the Council's Constitution:

- (i) An additional responsibility for decision making to the Planning Committee: "Where a Written Representation is to be provided to a Development Consent Order Application Process, if the Council is a host authority";
- (ii) That all other responses, decisions and actions during the Development Consent Order application process including The Examination are delegated to the Head of Economy and Planning;
- (iii) That the negotiation and completion of development consent obligations (Section 106 planning agreements) are delegated to the Head of Economy and Planning;
- (iv) That any subsequent responses to non-material and material changes are delegated to the Head of Economy and Planning;
- (v) That decisions on the discharge of Requirements are delegated to the Head of Economy and Planning;
- (vi) That power to take enforcement action under Part 8 of The Planning Act 2008 is delegated to the Head of Economy and Planning and The Head of Legal, Democracy and HR;
- (vii) That Planning Performance Agreements are negotiated and agreed by the Head of Economy and Planning.

3. Reasons for the Recommendations

- 3.1 If a DCO application for a nationally significant infrastructure project in Crawley is made to the Planning Inspectorate, (PINS), for example by Gatwick Airport, the Council will need to make timely responses at various stages in the process to meet strict statutory deadlines. Therefore, in order to ensure Crawley Borough Council's views can be taken into account by PINS there is a need to put in place appropriate delegations to agree responses.
- 3.2 A Planning Performance Agreement (PPA) is a project management tool and can be negotiated between the Local Planning Authority and an Applicant on any planning application casework for development proposals which create significant amounts of work and have resource implications. They are therefore regularly used for DCO applications to agree timeframes and secure additional resources.
- 3.3 The proposed amendments to the Constitution will secure the appropriate delegations for timely decision-making for the various responses required for any DCO applications, and to enter into PPAs for the Gatwick DCO and any other DCOs or planning applications in the future.

4. Background

- 4.1 The DCO process is the planning procedure for dealing with proposals for nationally significant infrastructure projects. It was established by the Planning Act 2008, as amended, and involves an Examination of major proposals relating to Energy, Transport, Water, Waste, and Waste Water, with PINS handling the process and the Secretary of State making the decision on the Application.
- 4.2 The DCO process contains many areas where local authorities, particularly those in which the development is located, have a specific role, and their participation is expected throughout the process. Participation is not obligatory but it is strongly advised. Local authorities are expected to provide a local perspective of potential impacts at the pre-application stage and to participate in the Examination. They are likely to be responsible for discharging, monitoring and enforcing many of the provisions and requirements (akin to planning conditions), including the negotiation and completion of section 106 planning obligations, in their area if the DCO is granted. The DCO once confirmed is set out as a Statutory Instrument, it grants planning permission for the proposed development.

5. Description of Issue to be resolved

- 5.1 The Council's Constitution currently does not include any delegations for the DCO process. The Act and related Regulations including statutory Guidance and Advice notes explain that there are numerous deadlines for local authorities and other interested parties to meet, with swift responses expected especially during the Examination phase. Authorities are encouraged to ensure they have adequate delegations in place as there is unlikely to be time to seek committee approval for representations made during the examination. Committee approval is not required for any DCO documents, this is for each local authority to determine.
- 5.2 These changes need to be introduced into the new Constitution to be agreed at Full Council in May because Gatwick Airport's Draft Masterplan includes a proposal to make routine use of the emergency (standby) runway. Whilst at this stage it is not

certain whether Gatwick will progress this proposal, an application to do so would be a nationally significant infrastructure project because it will add more than 10million passengers per annum capacity, and it would therefore be determined through the DCO process. The Draft Masterplan suggests this process could start in mid-2019.

- 5.3 PPAs are increasingly being used by local planning authorities to help meet the project management and resource demands of major or complex planning applications and DCO applications. They can be used to fund additional staff and/or commission expertise and can be entered into at any stage in the planning process. The DCO process for the airport will create significant demands on resources across the Council, but particularly in Planning, Environmental Health and Legal. The fee for the DCO will be received by PINS, not the local planning authority, but a Planning Performance Agreement can be sought by the local planning authority with the Applicant, (for example GAL), including Applicant funding towards additional resources.

6. Information & Analysis Supporting Recommendation

- 6.1 A host local authority, a council in which a nationally significant infrastructure development is situated, has a significant role right from the start of the DCO process. The Planning Inspectorate's Advice Note 2, "The role of local authorities in the development consent process" provides further information (see background documents). A list of some of the various responses required is set out below:-

Pre-Application Stage

- Comment on the Applicant's draft Statement of Community Consultation(SOCC)
- Respond to the Applicant's pre-application consultation about the scheme
- Comment on the Scoping Opinion for an Environmental Statement
- Agree the terms of any PPA with the Applicant
- Agree draft section 106 Planning obligations /Heads of Terms

Acceptance Stage (by PINS)

- Submit representation on the Adequacy of Consultation

Pre-Examination

- Submit a Relevant Representation (summary of the main issues for the Local Impact Report LIR and Written Representation)

Examination

- **Submit a Local Impact Report (LIR)**
- **Submit a Statement of Common Ground(SOCG)**
- **Submit a full Written Representation** (the authority's view on whether the application should be granted.)
- Respond to the Examining Authority's questions and requests for further information
- Comment on other interested parties' representations and submissions
- **Submit a signed planning obligation (S106)**

Post Decision

- Discharge of DCO Requirements, obligations and monitoring of compliance
- Enforcement
- Respond to material and non-material changes notifications

- 6.2 The major pieces of work are highlighted in bold above. In the Local Impact Report, (LIR), the Council sets out details of the positive, negative and neutral impacts of the proposed development on the authority's area. Consultation with the community or neighbouring authorities is not required as they are expected to make their own representations, although a joint LIR could be submitted with neighbouring authorities. The LIR should not undertake a balancing exercise. If the Council wishes to express a particular view on whether the application should be granted or not the Council can submit a separate Written Representation. This would obviously be informed by the factual LIR. Throughout the process, starting at the pre-application stage, the Council is expected to discuss the requirements (akin to planning conditions) and planning obligations. A fully signed S106 Planning Agreement has to be in place by the close of the Examination for it to be taken into account by the Planning Inspectorate.
- 6.3 PINS Advice Note 2 emphasises that there are very short timescales for some of the responses required from the Council. For example, a set deadline of 28 days to provide comment on the draft Statement of Community Consultation and of only 14 days to submit the Adequacy of Consultation representation. Those days are calendar days. Response times on questions during the Examination may be even shorter. As a result of this time pressure, and because all responses required apart from the Written Representation are technical matters, it is considered that the most sensible approach would be for endorsement of all responses apart from the Written Representation to be delegated to the Head of Economy and Planning. The Written Representation provides the only opportunity to make informed comments on the planning merits of the application and forms the Council's response to the application, ie. whether or not it supports the application and its reasons, so it is felt that this should be considered by the Planning Committee. It will be informed by the LIR and the Statement of Common Ground, so it is likely that the draft versions of these reports will be provided for information to the Planning Committee. However, these documents, especially the Statement of Common Ground and the S106 Planning Agreement, may change during the Examination process as issues are discussed and mitigations for impacts are agreed, and therefore the sign-off for the final documents should remain delegated to the Head of Economy and Planning. Sub-delegation schemes for officers will pick up all the additional authorities, as appropriate, below the Head of Service level.
- 6.4 PINS Advice Note 2 is clear that the Examining Authority can only take into account evidence that been received by the close of the Examination, and that late submissions of evidence may prejudice the ability of other interested parties to consider and comment on its content. It states that there is unlikely to be time to seek committee approval for local authority representations and that it won't be possible to structure the Examination timetable around an authority's committee cycle. The option of taking all the required responses and documents through the Planning Committee would, therefore, not be feasible and so these are proposed to be delegated to the Head of Economy and Planning as with other Development Management functions. However, the frequency of the Planning Committee meetings means it would be possible to take the Written Representation to it for a decision on the Council's viewpoint on the application. This will be informed by the draft LIR.
- 6.5 Local authorities of host and neighbouring authorities are encouraged to consider joint working arrangements at an early stage as these can bring benefits in terms of sharing costs, resources and expertise. PPAs, Adequacy of Consultation representations, LIRs, Statements of Common Ground and Written Representations can, if wanted, be structured to highlight the shared areas of concern and/or interest, as well as identifying specific issues related to individual authorities. Officers will

explore the opportunities in joint working arrangements, potentially expanding existing groups such as the Gatwick Officers Group and the Gatwick Joint Local Authorities Group.

- 6.6 If the Secretary of State decides to grant development consent, the local authority then has the responsibility to discharge requirements, (similar to planning conditions), and to enforce the terms of the DCO, as with any planning permission. The majority of requirements are likely to be handled by Crawley Borough Council for a DCO by Gatwick Airport as the “relevant authority”, but another local authority can take on this responsibility for some of the requirements, subject to the agreement of the Secretary of State. The Secretary of State retains the decision-making powers in respect of non-material and material change applications, with the Council a prescribed consultee which may be notified and invited to submit a representation depending on the scale and nature of the changes proposed. It is proposed decisions on discharging requirements, and responses to non-material and material change consultations will be delegated to the Head of Service. As the Council will be responsible for enforcement, the current decision-making arrangements for enforcement will be followed.

7. Implications

- 7.1 The proposed amendments to the Constitution will help the Council meet its obligations through the DCO process and help secure additional resources.

8. Background Papers

The Planning Inspectorate Feb 2015: The role of local authorities in the development consent process.

https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/03/Advice_note_2.pdf.