

Strategic Planning, Sustainability and Transportation Committee

12 March 2019

Publication of Personal Information on the Planning Web Pages

Lead Head of Service	Rob Jarman, Head of Planning & Development and Angela Woodhouse, Head of Policy, Communications and Governance
Lead Officer and Report Author	Angela Woodhouse, Head of Policy, Communications and Governance
Classification	Public
Wards affected	All

Executive Summary

The report provides information on the council's approach to publishing personal information in relation to the Planning Service

This report makes the following recommendations to the Strategic Planning Sustainable and Transportation Committee

1. That the briefing be noted

Timetable

Meeting	Date
SPST Committee	12 March 2019

Publication of Personal Information on the Planning Web Pages

1. Briefing Report

- 1.1 On 4 December 2018, the Committee considered the Statement of Community Involvement Consultation responses, they agreed that the statement be adopted and also requested a report clarifying the policy for publishing respondent's personal details as part of consultation processes, and in particular planning matters to be submitted to the Strategic Planning, Sustainability and Transportation Committee.

Authority wide approach to Consultation

- 1.2 The Council has in place a central resource to support consultation across the Council in the form of the Policy and Information Team and the SNAP consultation system.
- 1.3 Maidstone Borough Council is a member of the Consultation Institute which sets out seven Best Practice Principles that its members should regard for. These principles are:
- **Integrity** – If you are going to consult on something you need to be prepared to listen to what people say.
 - **Visibility** – Ensure that the relevant stakeholders are made aware of the consultation
 - **Accessibility** – The survey method should be accessible for the intended audience and hard to reach groups.
 - **Transparency** – The governance arrangements for how consultation outcomes will feed into the decision making process should be transparent.
 - **Disclosure** – All relevant materials and content should be disclosed.
 - **Fair Interpretation** – Decisions should be representative of the entire spread of opinion.
 - **Publication** – Participants have a right to receive feedback on the final output and result of the process.
- 1.4 Where the Policy and Information Team are engaged to support a service in running consultations they will work with the service to ensure the principles above are adhered to and work with that service to deliver the consultation that is most appropriate for them. They may for example deliver focus groups where a specific issue needs to be tackled in depth or assist with interviews, for bigger consultations a quantitative based survey may be more appropriate.

Data Protection

- 1.3 To comply with Data Protection legislation all surveys which involve the collection and processing of personal information should have a link to the Council's privacy statement. The collection of personal information should be adequate, relevant and not excessive in relation to the purpose for which it is collected. Personal data is any information that can identify a living person. This includes information that, when put together with other information, can then identify a person e.g. a name, an identification number, location data, an online identifier or one or more factors relating to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- 1.4 In order to process personal data the Council must have a legal reason to do so. The Council is allowed to process data for a number of reasons including:
 - it is necessary to perform our statutory duties
 - as part of a contract with an individual
 - it is required by law
 - it is necessary for employment purposes
 - it is necessary for legal cases
 - it is to the benefit of society as a whole
 - it is necessary to protect public health
 - you, or your legal representative, have given consent
 - it is necessary to protect someone in an emergency
- 1.4 If the Council does not have a legal basis for processing personal data we are required to get consent from an individual for using their personal data. In most cases we process data to fulfil a public task.

Publication of Personal Information on the Planning Portal

- 1.5 As this Committee will be aware the Statement of Community Involvement (SCI) sets out the Council's policy for consulting and engaging with individuals, communities and other stakeholders, both in the preparation and revision of local development plan documents and in development control decisions. In regard to plan making the level and type of consultation is dependent on the type of plan and its consultation stage. Unless there is a good reason not to, the Council must follow the SCI once adopted, failure to comply with the SCI could lead to the quashing of any planning permission issued.
- 1.6 The SCI outlines at para 6 that:

"People can submit comments on [local development plan] documents and planning applications either online, by email or by letter. Individuals,

businesses and other groups must provide a name and address for their comments to be valid, and any comments received are treated as a public document and are made public. Personal data held on the Council's databases are subject to the prevailing data protection regulations that exist at the time."

- 1.7 In the case of consultation responses relating to the preparation and revision of local development plan documents the Council does not publish personal details, albeit that this would be available to the Secretary of State. In terms of publishing comments as long as at the point of collection (for example through a privacy notice) it was made clear that comments would be published it would be acceptable to publish comments as they are received in accordance with the consultation process. The SCI makes it clear that "*any comments received are treated as a public document and are made public.*"
- 1.8 In the case of consultation responses received regarding a planning application, in addition to the requirements set out in paragraph 1.6 above, the SCI states (at para. 46) that: "*representations submitted on a planning application can be found on the Council's website*" (i.e. through its publicly accessible planning portal). The Council does therefore have to publish formal representations submitted on its website in accordance with its adopted SCI. The SCI does not, however, prescribe that personal details (including names and addresses) must be published on the publicly accessible planning portal. It simply advises that personal data will be held in accordance with data protection regulations.
- 1.9 The public's right to obtain information held by local authorities is contained in various legislative provisions:

The Local Government (Access to Information) Act 1985 allows, with certain exceptions, for the public to attend most Council meetings and inspect documents prepared or provided in connection with the business discussed at those meetings. It also permits a person to inspect a document, to make copies of, or extracts from it, or request a photocopy (paying a reasonable fee).

The Environmental Information Regulations 2004 (EIR) and Freedom of Information Act (FOIA), give rights of public access to information held by public authorities. The Council publishes comments on the website in accordance with regulation 4 of the EIR which has a general presumption in favour of being as open and transparent as possible, and actively promotes 'electronic means' of access.

As such, subject to legislative exceptions, any correspondence (incorporating personal details) should be made available for public inspection and any person is entitled to make copies thereof. The placing of these details on the publicly accessible planning portal on the Council's website as well as the public file would allow everyone to assess the weight of the representation made in an open and transparent manner.

1.10 In an effort to meet the requirements of transparency whilst complying with data protection legislation, the Council has also published information advising the public as to how personal data collected as part of the planning application process will be processed and why. This information is explicitly contained in the Council's published guidance - "*Planning Applications -Have your say*"¹, which states:

"Any written comment you make about an application must, by law, be placed on the file (which we make available via the Council's website and include in any other form of the file held). This does not give permission for any re-use of the information, for any purpose. What this means is that:

- *Your comment including your name and address will form part of the planning application documents and will be available for public inspection on the website and any other form of application record (currently a paper file).*
- *We will not publish the following personal information: signatures, phone numbers, email addresses on the website. To help us, please do not include personal telephone numbers and use a printed signature. Business contact details will normally be published.*
- *We also do not publish medical or commercially sensitive information – before submission please consider the need to supply this information as part of a comment.*
- *Letters marked confidential (including in the text at the end of emails) will not normally be taken into account as they cannot be made publicly available*
- *Any comments received will be retained on the public file and will be kept publicly viewable during the appraisal period, after the decision has been made and thereafter*

Therefore it may be possible for your name and address to be identified through a search on internet browsers and search functions such as Google and Yahoo.

Exceptions

- *In exceptional circumstances we will consider keeping your name and/ or address confidential e.g. if a person is officially recorded as being the subject of harassment. If you feel your comment should be kept confidential please write a letter setting out your reasons and marked "confidential" to the Head of Planning who will make a judgement and advise you whether or not submission of a comment without the required personal details is possible.*

¹ "*Planning Applications -Have your say*" can be accessed here (https://www.maidstone.gov.uk/_data/assets/pdf_file/0007/71899/Planning-Applications-Have-Your-Say.pdf).

2. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	No implications	Head of Policy, Communications and Governance
Risk Management	No implications	Head of Policy, Communications and Governance
Financial	No implications	Head of Policy, Communications and Governance
Staffing	No implications	Head of Policy, Communications and Governance
Legal	No implications	Head of Policy, Communications and Governance
Privacy and Data Protection	The briefing sets out how the Council meets its privacy and data protection requirements.	Head of Policy, Communications and Governance (Data Protection Officer)
Equalities	No implications.	Head of Policy, Communications and Governance
Public Health	No implications.	Head of Policy, Communications and Governance
Crime and Disorder	No implications.	Head of Policy, Communications and Governance
Procurement	No implications.	Head of Policy, Communications and Governance