



City of Westminster Cabinet Member Report

Decision Maker:	Cabinet Member for Planning and Public Realm
Date:	16 August 2017
Classification:	General Release
Title:	Review of the City Council's Existing Local List of Information Requirements for Planning and Associated Applications: Agreement to consult
Wards Affected:	All
City for All:	This decision enables progress towards the City for All commitments to provide a high quality, fair and efficient planning service, which will assist businesses, developers and residents.
Key Decision:	No
Financial Summary:	No financial implications. Consultation will be met through existing budgets.
Report of:	Director of Planning

1. Executive Summary

The City Council's local list of validation requirements sets out information we require to allow the validation and assessment of planning applications, in addition to those national information requirements set out in primary legislation. National Planning Practice Guidance and the Town and Country Planning (Development Management Procedure) Order 2015 requires local planning authorities to review their local validation requirements every two years.

The list was last reviewed, agreed and published in 2014 and a further review is now due. This report therefore sets out the findings of a review the council's current local list of validation requirements and suggests some limited revisions should be made in response to new and amended regulations, policies and guidance.

National Planning Practice Guidance sets out the process for the review of validation requirements, which includes public consultation. Authorisation is therefore now being sought to undertake public consultation on proposed changes. Following this consultation exercise, the results will be reported back to the Cabinet Member, with any suggested revisions to local requirements where appropriate. An up-to-date local list can then be adopted and published on the website.

2. Recommendation

That the Cabinet Member resolves to agree the revised draft local lists of information requirements for the validation of planning and related applications set out in Appendix 1 to this report for consultation purposes.

3. Reason for Decision

To provide an up-to-date local list of validation requirements for planning and related applications, as required by national policy and guidance.

4. Background, including Policy Context

4.1 Background

A local planning authority can only request supporting information with a planning application where this is specified on a formally adopted 'local list' which has been published on its website less than two years before an application is submitted.

This local list seeks to provide clarity on what information requirements for applicants and helps ensure we have all documentation required to allow the proper consideration of applications in addition to the basic documentation required by primary legislation, early in the process. By requiring this detail as part of the planning application it is often possible to prevent the use of conditions requiring further submissions which will reduce timescales for implementing permissions as well as reducing pressure on workload and resources.

In the majority of cases agreement is easily reached with applicants regarding what is required to be submitted with an application, as officers use discretion to ask only for relevant documentation. However, the list sets out the full range of documents which may be requested for applications of different types and scale and explains why documents are required in certain circumstances.

Section 62 (4A) of the Town and Country Planning Act 1990 (inserted by the Growth and Infrastructure Act) and article 11(3)(c) of the Town and Country Planning (Development Management Procedure) (England) (Order) 2015 are relevant. The latter states that any information requested with a particular planning application must be:

- reasonable having regard, in particular, to the nature and scale of the proposed development; and
- about a matter which it is reasonable to think will be a material consideration in the determination of the application.

The Town and Country Planning (Development Management Procedure)(England) Order 2015 also provides the applicant the opportunity to dispute the information requested by the LPA.

4.2 Process for review of local list

The National Planning Practice Guidance (2014) recommends a three-step review process. First, a review of the list, ensuring the drivers for these still exist, set out as statutory requirements, policies in the National Planning Policy Framework or development plan, or published guidance that explains how adopted policy should be implemented. Local planning authorities should decide whether they need to revise their existing local list or if no changes are necessary.

Once this review has been undertaken, if it is considered that changes are necessary, the proposals should be issued to the local community, including applicants and agents, for consultation.

Following consultation, responses should be taken into account by the local planning authority when preparing the final revised list and the revised local list published on the local planning authority's website. Further review can be undertaken at any time.

4.3 Proposed Changes to the Local List of Requirements

For the reasons set out above, Westminster's local list of validation requirements has been reviewed. It is considered that the majority of requirements set out on the current validation lists should be retained and are supported by current policy and national guidance. However, a number of small changes are recommended as set out below, the majority to reflect the Council's increased emphasis on digital working, changes to policies within the City Plan and new types of application for 'prior approval' introduced by primary legislation.

Digital Working

The Development Planning department undertook an extensive review of processes in 2014 and subsequently went through a 'digital transformation' project which has resulted in an increased emphasis on digital working and more specifically, a shift from paper-based planning applications to digital files. As a result, the validation checklists have been amended to encourage applicants to submit their planning and related applications electronically, which is more cost effective for the applicants than submitting up to 4 copies of paper documents. It also saves costs for the Council in terms of copying and printing of documents as officers now process the applications digitally. The amended checklists also request that applicants include a scale bar on their drawings to allow officers to take accurate electronic measurements. Applicants are requested to refer to the City Council's file naming conventions and to combine related plans or documents together to reduce the number of separate files in order to assist officers and those viewing the applications details online. These changes to processes have already been implemented in practice and no significant issues have arisen, indeed they have been generally welcomed by applicants and agents.

References to Legislation and Policy

The checklists have been amended to update references to primary legislation. For example, the Town and Country Planning (General Permitted Development) Order 1995 has been replaced by the 2015 version (subsequently amended) and likewise the Town and Country Planning (Development Management Procedure) Order 2010/2012 have been replaced by the 2015 version. The implications for the new types of 'prior approval' applications introduced by the 2015 version of the General Permitted Development Order (and its subsequent further revisions) will be outlined separately below. The checklists have been amended to refer to the replacement of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 in May 2017.

References to Westminster's adopted Core Strategy have been replaced by the City Plan (adopted in November 2016).

Changes to Air Quality requirements

The Mayor of London published the 'Sustainable Design and Construction SPG' in April 2014 which included, amongst other matters, details of the air quality neutral policy introduced by Policy 7.14 of the London Plan 2011. The Air Quality Neutral policy is

designed to address the problem of multiple new developments that individually add only a small increment to pollution at the point of human exposure (i.e. ambient concentrations), but cumulatively lead to baseline pollution levels creeping up. The new policy requires developers to design their schemes so that they are at least 'air quality neutral' in terms of emissions at source. As a result the guidance within the validation checklists has been updated to reflect the requirement for an air quality neutral assessment in certain cases (dependent on the scale of application, whether CHP (combined heat and power) or biomass is included or if the proposal is likely to bring new sensitive receptors into an area of poor air quality (threshold: 10 or more new residential properties, school, care home or medical facility)).

Changes to Community Infrastructure Levy (CIL) requirements

Since the publication of the current version of the validation checklists, Westminster has adopted its own CIL in addition to the Mayor of London's CIL. The checklists have been amended to include reference to Westminster's CIL and also to correct an error on the previous list with regard to the title of the form required for submission. The adoption of Westminster's CIL has been subject to extensive consultation and has been in place since May 2016 however it is included here for clarity and completeness.

Changes to requirements for Basement Applications and the new Code of Construction Practice

The current version of the validation checklists requires the submission of a 'construction management plan' and a 'structural survey/structural methodology statement for applications involving the excavation of a basement. These plans and surveys seek to provide details of the proposed method of construction of the new basement and details to demonstrate that reasonable consideration has been given to issues such as access, working hours and impact on local amenity. In July 2016 the City Council adopted Policy 28.1 of the City Plan which deals specifically with basement development and from September 2016, the new Code of Construction Practice which now applies to a range of developments including basements. In light of the new basement policy and the updates to the Code of Construction Practice, a number of changes are proposed in relation to validation requirements for construction management.

The requirement for submission of a construction management plan has been removed from the validation checklists as these details are now secured as part of the detailed submission under the Code of Construction Practice (for a fee which depends on the scale of development proposed) to the City Council's Environmental Sciences Team following the grant of planning permission. The detailed submission is required by condition attached to the planning permission. This is a more appropriate way of dealing with these matters as the issues involved (dust/noise/disruption etc) are already covered by environmental health and highways legislation. In addition, it is more likely that the applicant will have appointed a contractor at this stage of the process and therefore will be able to provide more certainty regarding the construction programme and details. Policy 28.1 of the City Plan requires the applicant to submit a commitment to providing these details pursuant to the Code of Construction Practice (CoCP) and as such the validation checklists now require a draft signed version of the CoCP checklist at validation stage which signals this intent for the benefit of the City Council and local residents at planning application stage.

The requirement for submission of a structural survey/structural method statement for basement applications remains however the checklists have been amended to clarify that there must be appropriate self-certification by suitably qualified engineer and that the submission must include soil investigation and geo-hydrology assessments and a Sustainable Drainage (SuDS) statement, as required by Policy 28.1 of the City Plan.

These changes have already been consulted on extensively as part of the formal revision to the City Plan in July 2016 and have been implemented in practice following the adoption of the new basement policy and the CoCP, with no significant issues arising.

Changes to requirements for Flood Risk Assessments

The validation checklists have been amended to include reference to the requirement for a flood risk assessment where the site is located within a surface water flooding hotspot, in addition to the areas already identified as flood risk areas in terms of fluvial flooding by the Environment Agency. This will predominantly relate to applications involving basement excavation where surface water flooding is potentially an issue, as identified by the City Council's 'Basement Development in Westminster SPD' adopted in October 2014.

Changes to requirements for Noise Impact Assessments

Noise impact assessments (or acoustic reports) are required for applications involving, for example, mechanical air conditioning, ventilation and condenser units where the noise generated by these installations may have implications for the enjoyment of neighbouring noise sensitive properties such as residential premises and schools. The checklists have been amended to clarify that such assessments are required where the proposed installation has an 'external manifestation' (i.e. where at least part of the installation, such as louvres/vents, is visible externally) and only where the entire installation is external. This has already been implemented in practice for some time with no significant issues arising however it is included here for clarity.

Changes to requirements for Site Waste Management Plans

The requirements for submission of a site waste management plan has been removed from the checklists for smaller scale developments such as householder and where relevant (e.g. for basement applications), this will be covered under the Code of Construction Practice.

Changes to requirements for applications affecting Trees and applications for Tree Works

The checklists have been amended to include a requirement for a tree constraints plan in addition to a tree survey in order to ensure that sufficient details of the trees which may be affected by a proposal are provided for assessment. The supporting guidance also clarifies that the submitted details must accord with the recommendations in the current British Standard 5837 'Trees in relation to design, demolition and construction' and that tree protection details may also be required.

The checklist for applications for tree works has been amended to clarify that the requirement for submission of a full and clear specification of the works to be carried out and sufficient information to identify the relevant trees is a national rather than a local requirement.

Changes to requirements for Archaeological Assessments

The requirement for an archaeological assessment has been included in the checklists, depending on the nature of the proposals, there may be implications for archaeology (i.e. in particular for basement applications as identified in Policy 28.1 of the City Plan).

Changes to requirements for Design and Access Statements

The supporting guidance has been amended to clarify the national requirement as outlined in the National Planning Practice Guidance and the Town and Country Planning (Development Management Procedure) Order 2015 for submission of a design and access statement where one or more dwellings or a building of 100sqm or more within a designated area (i.e. a conservation area or World Heritage Site in the case of Westminster) is proposed. Whilst these changes are already set out in primary legislation and therefore are national requirements, the current checklists have been amended and new checklists included accordingly for completeness.

Requirement for submission of a Sustainable Drainage (SuDS) Design Strategy

Sustainable drainage systems (SuDS) include a range of sustainable methods of dealing with surface water run-off from new and existing developments. They aim to infiltrate as much water as possible back into the ground in order to manage flood risk, improve water quality, protect against drought and maintain healthy aquifers. New arrangements for approving and implementing SuDS through the planning system took effect on 6 April 2015 through the implementation of Schedule 3 of the Flood and Water Management Act 2010. As part of these changes, new 'non-statutory' national SuDS standards have been introduced and the Government's National Planning Practice Guidance (NPPG) has been strengthened to make clear that SuDS should be delivered. As a result the checklists have been amended to clarify the national requirement for submission of a SuDS design strategy for all major developments with surface water implications; this change is a national rather than a local validation requirement however it is included here for completeness.

SuDS design strategies are also required for basement applications as part of the structural survey/structural method statement described elsewhere in this report.

Changes to requirements for Retail Marketing Statements

The checklists for applications involving full planning permission have been amended to include a requirement for submission of a retail marketing statement where the proposal involves the change of use of a public house resulting in its loss or the loss of floorspace. This follows a significant number of applications in recent years for the change of use of public houses and the resulting loss of community facilities, as recognised by Government through the introduction of the ability to designate an Asset of Community Value under the Localism Act 2011 and changes to the 'permitted development' regime facilitated by the Town and Country Planning (General Permitted Development) Order 2015 (as amended). These requirements have already been implemented in practice for some time with no significant issues arising.

Changes to requirements for Telecommunications Development

The checklists have been amended to clarify that the applicant must submit an International Commission on Non-Ionizing Radiation Protection (ICNIRP) declaration to accompany such applications. This requirement is already outlined in primary legislation and has been implemented in practice for some time with no significant issues arising however it is included here for clarity and completeness.

Changes to requirements for Viability Assessments

The supporting guidance for viability assessments has been amended to clarify that any proposal which does not comply with policy and this failure is being justified on viability grounds must be accompanied by a viability report. A link to the City Council's guidance regarding publication of reports and Freedom of Information requests has also been included.

Changes to requirements for Listed Building Consent applications

The current version of the checklist for 'stand-alone' listed building consent applications requires submission of the following: air quality assessment, biodiversity survey and report, construction management plan, land contamination assessment, site waste management plan. These have been removed from the draft list as they are not considered directly relevant to the assessment of a listed building consent application (they deal with matters which are not covered by the relevant legislation governing listed buildings). Where a development relating to a listed building also requires planning permission, these requirements will be dealt with under the associated planning application. The checklist has been amended to include a requirement for plans and drawings necessary to describe the proposal as this was omitted in error from the current checklist.

Changes to requirements for Advertisement Consent applications

The checklists have been amended to clarify that plans and drawings must show the proposed method(s) of illumination relating to the advertisements. This has already been implemented in practice for some time with no significant issues arising however it is included here for clarity and completeness.

Applications for lawful development certificate for Proposed Works to a Listed Building

The Planning (Listed Buildings) (Certificates of Lawfulness of Proposed Works) Regulations 2014 introduced a new type of application which allows an applicant to establish whether proposed works to a listed building would be lawful i.e. they would not affect the character of the listed building as a building of special architectural or historic interest and therefore, would not require listed building consent. A new validation checklist has been included to outline the national and local validation requirements for such applications. The majority of the requirements contained within the checklist are national requirements outlined within the primary legislation; the only local requirement involves a requirement for the submission of plans and drawings to describe the proposal which may be required depending on the nature of the proposals.

Changes to requirements for applications for Approval of Details Reserved by Condition

The checklist has been amended to clarify that specific details/drawings/sample of materials etc as outlined within the relevant condition must be submitted. This has already been implemented in practice for some time with no significant issues arising however it is included here for clarity and completeness.

Applications for Non-Material Amendments following grant of permission

It is sometimes necessary to amend development proposals after planning permission has been granted. Where these are not significant amendments, they may be described as 'non-material'. Section 96A of the Town and Country Planning Act 1990, amended by the Planning Act 2008, permits applications for non-material amendment to planning permissions. This avoids the need for a new planning application to be submitted, allowing instead for the existing permission to be amended whilst remaining subject to the original conditions and time limits. A new validation checklist has been included in respect of such applications. The local list is similar to that already in place for applications to vary or remove a condition attached to a planning permission, namely it states that supporting information may be required where the change proposed affects a particular aspect of the approved

scheme. In practice, a limited amount of information will be required as the changes proposed under Non-Material Amendment applications tend to be restricted in nature, however for the sake of completeness it is considered prudent to provide a full list of what may be required. This provision has been in place since the primary legislation was introduced in 2008 with no significant issues arising in terms of validation.

Changes to requirements for Prior Approval applications under the Town and Country Planning (General Permitted Development) Order 2015 (as amended)

The TCP (General Permitted Development) Order (GPDO) introduced in 2015 (and subsequently amended) replaced the 1995 Order which outlined the national provisions for 'permitted development'. The 2015 Order made a number of changes to existing provisions and introduced a number of new provisions for proposals requiring 'prior approval' (i.e. certain types of development, mainly changes of use, which are only 'permitted' on the basis that an application for prior approval is first submitted to the LPA and that the LPA raises no objections to the development on certain limited grounds within 56 days). Whilst these changes are already set out in primary legislation and therefore are national requirements, the current checklists have been amended and new checklists included accordingly for completeness.

Changes to requirements for applications for Prior Notification of Proposed Demolition and Prior Approval for Change of Use with respect of Assets of Community Value

In many cases the demolition or change of use of a building does not require the benefit of planning permission however the developer must first inform the LPA of their intention to demolish or change the use of the building.

The Localism Act 2011 introduced a provision for the registration of 'Assets of Community Value'. The Town and Country Planning (General Permitted Development) Order 2015 (as amended) (Part 11, Class B in respect of demolition and Schedule 2, Part 3 Class A and B, Part 4 Class C and D in respect of certain changes of use) introduced a requirement for the developer to write to the LPA to request whether or not the building has been nominated an Asset of Community Value. The Order outlines what information this request should include, as well as the requirement for a written justification for the proposed demolition where relevant. Whilst these changes are already set out in primary legislation and therefore are national requirements, the current checklists have been amended and new checklists included accordingly for completeness.

Requirements for Electromagnetic Field Surveys

In certain limited cases a development may include, for example, power generation or transmission through an electricity sub-station. Where there are sensitive occupiers nearby such as residential or educational occupiers, an electromagnetic field survey may be required to demonstrate that the proposal does not raise any significant implications for health or the enjoyment of the adjacent properties.

Heritage Assets/ World Heritage Sites

The recent report by the UNESCO mission to Westminster World Heritage Sites highlighted the need for a Heritage Impact Assessment (HIA) following ICOMOS guidelines to be carried out where there is potential for any development to impact on the outstanding universal value of the World Heritage Site.

4.4 Consultation

As outlined above, the majority of the changes proposed are for the sake of clarity or completeness and they do not represent any significant changes to current practice. A high proportion of the changes respond to changes to national legislation rather than changes to local policy. Those which do relate to changes to local policy, such as the City Council's new basement policy and Code of Construction Practice, have already been subject to extensive public consultation as part of the formal revision to the City Plan.

Given the limited scope of changes proposed it is recommended a four week consultation on amendments to the local list of validation requirements is sufficient. The updated validation checklists will be sent to Ward Councillors, local amenity societies, the Greater London Authority, statutory consultees, the Westminster Property Association and other agents and developers who regularly submit applications to the City Council in addition to publication on the website, along with a statement indicating that we consider the current requirements remain appropriate and only a few minor changes are required. Following the consultation exercise, findings will be reported back for consideration by the Cabinet Member prior to publication of the final set of checklists on the website.

5. Financial Implications

There are no financial implications arising from this report. Consultation will be undertaken electronically and can be met from existing budgets.

6. Legal Implications

None. The Director of Law has considered this report and does not have any additional legal comments.

7. Staffing Implications

None.

8. Business Plan Implications

The proposals support the City Council's Better City, Better Lives initiative by helping to provide a high quality, fair and efficient planning service, which will assist businesses, developers and residents.

9. Consultation

See Section 4 above.

10. Crime and Disorder Act 1998

No issues arising.

11. Health and Safety Issues

No issues arising.

12. Human Rights Act 1998

No issues arising.

13. Conclusions and Reasons for the Proposed Decision

The draft local list of validation requirements is attached at Appendix 1, with the revised and additional elements shown in red italics. It is recommended that the Cabinet Member agrees the draft local list of validation requirements for consultation purposes. Following the consultation exercise, the results will be reported back to the Cabinet Member with suggested revisions in response to any comments received.

Amendments will be made if appropriate in the light of representations received during the consultation period, which will form the next stage of the process. The revised Local List of Information Requirements will then be reported back to the Cabinet Member for Planning and Public Realm with a recommendation for adoption.

If you have any queries about this report or wish to inspect one of the background papers please contact:

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Appendices

1. Westminster City Council - DRAFT List of Validation Requirements for Planning and Related Applications May 2017.

For completion by Cabinet Member for Planning and Public Realm

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

State nature of interest if any

.....

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled

.....and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Planning and Public Realm

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
.....
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law and/or the City Treasurer (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.