

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee

7th October 2009

AUTHOR/S: Executive Director (Operational Services) / Corporate Manager - Planning ar Sustainable Communities

REVIEW OF CHAIRMAN'S DELEGATION MEETING

Purpose

1. To consider whether Chairman's Delegation Meeting (ChDM) should be retained or abolished.
2. To include the Development Control Team Leaders in the powers and functions delegated to the Executive Director, Corporate Manager and Development Control Manager.

Executive Summary

3. This report summarises the background to ChDM and the reasons why a review is necessary. It has been encouraged by unease expressed by certain Parish Councils, who favour either abolishment or change.
4. A report was presented to the Portfolio Holder's Meeting on 1 September 2009. The Portfolio Holder's response is included under consultations at paragraph 24 in this report.
5. Any change to the delegation system should run for a trial period of twelve months in order to assess whether it has a detrimental impact upon the operation of the current Planning Committee in terms of workload and frequency of meetings, the rate of delegated decisions, the achievement of Government application determination targets and the reaction of Parish Councils, who should be consulted before the end of the review period.

Background

6. The Chairman's Delegation Meeting was introduced in 1999 as an extension to the officer delegation scheme. It allowed officers to consult the Chairman and Vice-Chairman of Committee and local Members before determining a householder application where the officer recommendation was contrary to the comments of the Parish Council.
7. Since then, ChDM has been extended to include advertisement applications, applications for prior notification of Permitted Development (agricultural buildings and works, telecommunications and demolition).
8. In August 2007, Planning Committee agreed to extend the role of ChDM further by including within its remit applications for minor development (fewer than ten dwellings or less than 1,000 square metres of commercial floorspace) where the proposed decision of the officer to approve the application would conflict with or would not substantially satisfy through the imposition of conditions, the written representations of the Parish Council. After a six-month monitoring period, Planning Committee endorsed the changes in February 2008.

Considerations

9. For some years, ChDM operated successfully in establishing a more efficient way of working to maximise the delegation of applications for determination by officers, with only the most complex or controversial applications coming before Planning Committee.
10. It also provided a mechanism to ensure that the less controversial applications, where officer recommendation and Parish Council representation differed, could be determined within government timescales whilst at the same time introducing a District Councillor check/balance in the process.
11. This has contributed to the Authority achieving government targets for determining minor and other applications in the financial years ending March 2007 to 2009 inclusive and hence maximising Planning Delivery Grant.
12. However, over time the delegation system in general has become more complicated. Parish Councils, District Councillors and even Officers find it difficult to understand the system.
13. It is also not clear who is actually taking the decisions or how the process works. It is supposed to be only the officer taking the decision after hearing representations from the Chairman, Vice-Chairman and local Member, but the procedure is ambiguous.
14. Although all representations made on an application, including those of a Parish Council, are considered at the ChDM, the procedure and minutes do not identify the relevance of the quality of representations. However, all delegated reports, which summarise all representations, identify relevant policies and issues and justify the reasons for a decision, are put on to the web site and are therefore readily accessible by the public.
15. There is currently no support from a lawyer or a Democratic Services Officer, which would ensure that relevant advice was given on the declaration of interests under the Code of Conduct and that the meeting was minuted properly with decisions recorded correctly. This was an issue raised by the Standards Committee on 7 May 2009. The panel recommended that the procedures and operating principles of ChDM be reviewed and the review to include the consideration of provision of officer support from either Legal or Democratic Services, or both. It also said that this should be achieved by the establishment by the monitoring officer of an officer-working group, reporting to the Standards Committee at its 9 September meeting. This group has been meeting regularly.

Killian Pretty Review 2008 (KPR)

16. The most recent guidance upon officer delegation is incorporated within the KPR: "Planning Applications: A faster and more responsive system" and the Government's response to it in March 2009.
17. Recommendation 10 of KPR stated:

"That the input of elected Council Members into the planning application process needs to be better targeted on those developments which will make the greatest contribution to the future development of this area."

18. To achieve this one of the actions was:

“Local planning authorities should review and update their local schemes of delegation, so that the resources of planning committees are focused on applications of major importance or wider significance, and that a minimum delegation rate to officers of at least 90 per cent is achieved at all councils before the end of 2009.”

19. In response the Government stated:

“This recommendation is directed at local government, however we would welcome and support steps taken by local government to strengthen the relevance and take up of councillor training, ensure consistency between planning policy and planning application decisions to officers.”

Implications

20. Financial	No significant impact although if ChDM is abolished there would be small savings.
Legal	The Senior Lawyer has advised that only Parish Council attendance/speaking at ChDM would be contrary to natural justice (see paragraph 23).
Staffing	Retention of ChDM would involve additional Legal and/or Democratic Service Officer presence.
Risk Management	Workloads/Officer time is always managed to ensure application determination targets can be achieved.
Equal Opportunities	No impact. The Service promotes equality of access to this Service.

Consultations

21. At Scrutiny Committee on 25 June 2009 Comberton Parish Council, supported by Bourn, Caxton and Hardwick Parish Councils, raised questions. The principal points were:

- (a) A review of ChDM, which was promised at a meeting on 22nd October 2008, has not taken place. It is overdue.
- (b) Village development of up to 10 houses, which would be contrary to adopted Policies in the LDF Development Control Policies DPD July 2007, could be considered at ChDM. This discriminated against smaller villages, where small developments could have a considerable impact. Also any application in a protected area or to a protected property should go before Committee if the Parish Council disagrees with the officer's recommendation.
- (c) Lack of democracy in delegating 93% of all applications to Planning Officers.
- (d) Inability of Parish Councils to attend, or to speak at ChDM, unlike at Planning Committee. The reliance upon the Local Member to attend ChDM and to represent the Parish Council view is not always well founded particularly if the District Councillor cannot attend a meeting. This lack of village representatives at ChDM is seen as undemocratic and disempowering Parish Councils. Parish Councillors have extensive local knowledge. Also the absence of a Parish Council representative means that ChDM cannot question a Parish Council on representations.

- (e) Feed back from ChDM was opaque. There was no evidence that the Parish Council had any influence on decision-making. Decisions are made behind closed doors with no observers. It needs to be more transparent.
 - (f) There was little point in Parish Councils discussing planning applications if there was no evidence that their comments could influence decisions.
22. Since then comments have also been received from Melbourn, Linton, Barton, Longstowe, Harlton, Bourn, Milton, Whaddon, Heydon, Croydon and Hauxton Parish Councils. These are summarised as follows:
- (a) The present system of ChDM is unsatisfactory and it should be changed or abolished;
 - (b) There is a diminishing role of Parish Councils in the planning process;
 - (c) ChDM are held in closed meetings where Parish Councils are not directly represented. Therefore it is inherently undemocratic.
 - (d) If the SCDC corporate objectives include “listening to and engaging with our local community” and “working more closely with Parish Councils”, it is unjust that, for instance, applications of up to 10 dwellings are determined by ChDM because such applications are of such great relevance to the parishioners of smaller villages which have restricted scope for development. These applications are significant and highly controversial;
 - (e) Parish Councils should have a clearer say in the planning procedure and not just the completion of a consultation form. The place and role of Parish Councils in the planning procedure should be re-established. Parish views should continue to be taken into account in all planning applications in order to protect existing communities.
 - (f) Extensions to houses in the open countryside can be controversial. Such changes could be approved against the advice of the Parish Council without public scrutiny;
 - (g) An officer recommendation in conflict with that of a Parish Council on a controversial application should be referred to Committee. At the very least, a Parish Council representative should be invited to attend as observers or participate in ChDM; and
 - (h) Local knowledge is invaluable when considering applications in small villages. It is not possible for District Councillors to have full knowledge of every factor affecting an application. The input of the Parish Council is vital to local democracy. As the elected representatives of the community affected, it is essential that the Parish Council is seen to be an important part of the process.
23. The Acting Principal Solicitor advises against only giving Parish Councils the opportunity to be represented at ChDM. She states:
- “The process surrounding determination of planning applications is one governed by the rules of natural justice - i.e. that all interested parties should be informed of anything being said by others which could potentially prejudice their case and be given the opportunity to refute and challenge such representations.

Whilst Parish Councils are not statutory consultees in the planning process, the content of their representations are to be given due regard under the provisions of the Town and Country Planning (General Development Procedure) Order 1995. However, to the extent that the same constitute material planning considerations, Parish representations are equivalent to those submitted by members of the public or others with an interest in a particular application.

Consequently, natural justice would dictate that if Parish access to make oral representations to ChDM were allowed then an equivalent facility must be offered to others also interested in a particular application. Anything else would be inherently unfair. Therefore if the Committee was minded to open up the current Chairman's Delegation Meeting to include oral representations from Parish Councils, this invitation would also have to be extended to the public at large, including the applicant and objectors, which invites a logical conclusion that the meeting could become a rehearsal for Planning Committee itself."

24. In response to discussion at the meeting on 1 September 2009, the Planning Portfolio Holder agreed to submit the following consultation response to the Planning Committee:

"Central Government requires that South Cambridgeshire District Council determines a minimum of 90% of planning applications through delegation to officers. The Council introduced the Chairman's Delegation Meeting in an effort to recognise a statutory process but, at the same time, inject an element of local democracy. It is important to make sure that procedures remain effective, relevant and widely accepted. My view is that the contribution made by the Chairman's Delegation Meeting in its present form should be recognised and welcomed, but that, in the interests of transparency, interested parties (applicants, agents, objectors and Parish Councils) should from now on be invited to attend meetings, as observers only without speaking rights, subject to review in October 2010. Some amendments to the current Chairman's Delegation Procedure would be necessary for clarification and an amended procedure should be brought to the November meeting of the Committee."

Effect on Strategic Aims

25.	Commitment to being a listening council, providing first class services accessible to all.
	Some Parish Councils have expressed concern about the present system of ChDM. This has been rehearsed at Scrutiny Committee on 25 June and Planning Portfolio Holder Meeting on 1 September. As a consequence there is a need to consider the future of ChDM.
	Commitment to ensuring that South Cambridgeshire continues to be a safe and healthy place for all.
	No effect.
	Commitment to making South Cambridgeshire a place in which residents can feel proud to live.
	To provide an efficient and transparent decision-making process in which people and Parish Councils have confidence.
	Commitment to assisting provision for local jobs for all.
	No effect.
	Commitment to providing a voice for rural life.
	All applications are subject to public consultation. Those more significant and controversial applications will be considered by Planning Committee, at which the public can speak.

Options

26. It is considered that the possible options are:

A. Dispense with ChDM

This would create the most stream-lined system of decision-making either by Planning Committee or officers under delegation.

The delegation scheme is based upon a 'by-exception' model, whereby applications are only considered at Committee if they fall within one of nine exception categories. Over time these exceptions have increased and become more complicated and difficult for officers and Members to understand. A simplified structure would be produced to minimise the number of exception categories (eg. exception affordable housing sites) which would be considered by Committee.

In addition it would:

- (a) Empower a District Council Member to request that an application is made by Planning Committee, providing this request:
 - (i) is within 21 days of the registration of the application;
 - (ii) sets out the planning reasons for the request; and
 - (iii) is in writing; and
- (b) The Corporate Manager (Planning and Sustainable Communities), Development Control Manager or Team Leaders Development Control to have the right to refer to the Committee any application for planning permission or other consent or matter which would otherwise be determined under delegated powers.

In regard to (a) above, it should be borne in mind that Committee should focus on applications of major importance or wider significance. For that reason it is suggested that, if this option is adopted, the District Council Member call in power excludes householder applications outside Conservation Areas, advertisement applications and prior approval notifications (telecommunications, agricultural buildings and works and demolition), where, in the case of prior notification applications, the application cannot be reported to Committee in time for a decision notice to be issued within the strict deadlines imposed by Regulations. In the event that such a written request is made, or if the request is made outside the 21 day period, it is suggested that the request is formally considered by the Corporate Manager/Development Control Manager and the Chair of Planning Committee. The 21 days is suggested to minimise the delay between a request being received and the application being considered at Committee.

B. Revise the type of applications which can be considered by ChDM.

Whilst it is important to ensure that Planning Committee only considers the most complex or controversial proposals, officers recognise that an application for minor development (up to ten houses or up to 1,000 square metres floorspace for other uses) within a village environment can itself be controversial. In this option therefore applications of this nature, which are recommended for approval contrary to an objection raised by the Parish Council, would be reported to Planning Committee. In the 16 ChDMs in 2009

this would have resulted in an additional 22 Committee items spread over nine Planning Committee meetings.

Applications of any description recommended for approval in Conservation Areas contrary to Parish Council objection are already referred to Planning Committee.

There have been no Listed Building applications considered by ChDM so far during 2009. This would suggest that the additional burden on Planning Committee would not be significant if such applications, together with related householder applications, recommended for approval contrary to Parish Council objection were excluded from ChDM.

The effect of this change would be that ChDM would only consider applications that did not propose Major or Minor development, alterations, extensions, demolition or works within the curtilage of Listed Buildings or development within Conservation Areas.

This option would require officer support at ChDM from Legal or Democratic Services or both, placing additional resource burden on those Services.

C. Public speaking or attendance at ChDM

This procedure would effectively create a small sub-committee, albeit that the final decision remains with officers, would be open not just to Parish Councils, but to applicants, objectors and supporters to counter calls of unfairness and injustice and would place significant resource burden on Democratic Services. The Senior Lawyer has advised against Parish Councils alone being represented at ChDM (see paragraph 23).

Officer support from Legal or Democratic Services or both would be required at ChDM. There would also be a need to ensure that all parties were made aware of agendas.

This option could be implemented with or without changes to the type of applications considered at ChDM (see Option B above), although if ChDM is opened up to either public speaking or attendance, it is suggested that, for the trial period, no change is made to the type of applications which may be considered.

D. That no formal decision is made at this Meeting in order to allow a round of consultation with all Parish Councils and District Council Members with a further report being considered at the 2 December 2009 Planning Committee.

Comment

27. No other Cambridgeshire Authority operates a procedure equivalent to ChDM. East Cambridgeshire did introduce a similar arrangement in 2002 but dispensed with it in May 2009. The reasons given were:
- (a) The imminent internet public access to planning applications and the consequent increase in the transparency of consultations, comments, and officer reports;
 - (b) The changes for referral of applications by District Council Members to Planning Committee included in the Constitution; and
 - (c) Concerns about 'legitimacy' in the delegation process.

28. Whatever change is agreed should aim to improve the existing system, provide transparency and shouldn't penalise the Council in achieving Government performance targets in regard to determining applications.
29. There are benefits in discontinuing the ChDM so long as Planning Committee continues to provide public scrutiny and an opportunity for public speaking upon controversial major and minor applications, when an officer recommendation to approve conflicts with objections raised by a Parish Council. It will provide a more streamline process, which will be easier to understand by all parties. That benefit will, in my opinion, outweigh the disadvantages of a small increase in the number of applications considered at Committee.
30. The retention of ChDM would enable the Planning Committee to concentrate on the more significant and controversial applications. Attendance by applicants/agents, parish councils, supporters and objectors without speaking rights would aid transparency. If the ChDM is retained, support from Democratic and/or Legal Services will be required and there will be greater burden on staff in terms of the administration of the Meetings.
31. The officer working group also considers that, if ChDM is retained, the minutes of the Meeting should reflect any comments made by a District Councillor and an officer summarised report be prepared and circulated to the Parish Council and Local Member in advance as part of the agenda.
32. Whatever option is adopted, it is also suggested that Parish Councils might be asked to indicate on an adapted consultation form if they have good reasons for an application to go to Committee. The wording would be something like:

"In the interests of effective processing of business, the Local Planning Authority is minded to determine this application under delegated powers. However, it is possible in exceptional circumstances for the planning officer to refer this application to the Planning Committee if good reasons can be demonstrated for this to happen. Please indicate below if the Parish Council is of the opinion that such reasons exist and outline those reasons in full."
33. On the one hand this will help officers and Members to decide whether an application should be reported to Planning Committee, although it cannot be guaranteed. The decision will rest with Members and Officers only. On the other hand this could raise Parish Council expectations and create consistency problems. The Parish Council may now ask its Local Member(s) to call an application into Committee and that may remain the simplest option, thereby avoiding potential problems.

Recommendation

34.
 - A. That, having regard to comments made by Parish Councils and to simplify the decision-making process, the Officer Working Group recommends the ChDM be abolished and that a revised delegation procedure be considered by Committee on 4 November 2009.
 - B. That, in the event of any change to the present system being adopted, the Parish Councils be invited to comment before the end of the review period.
 - C. To ensure continuity and flexibility of service, it is recommended that DC Team Leaders have the same level of Delegation responsibility as the Corporate Manager and DC Manager.

Background Papers

The following background papers were used in the preparation of this report:

Officer Delegation Procedures: Report to Planning Committee 6 February 2008.
Government Response to the Killian Pretty Review ("Planning Applications: A faster and more responsive system") March 2009

These documents need to be available for public inspection.

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Notes:

Major Developments

For dwellings: where 10 or more are to be constructed (or if number not given, area is more than 0.5 hectares).

For all other uses: where the floorspace will be 1000 sq.metres or more (or site is 1 hectare or more).

Minor Developments is development which does not meet the criteria for Major Development or the definitions of Change of Use, or Householder Development.

Other Developments comprise:

Change of Use (*if it does not concern a major development and no building or engineering work is involved*):

Householder development

Advertisements

Listed Building Consents

Conservation Area Consents

Certificates of Lawfulness

Other decisions including certificates of appropriate alternative development and notifications under Circular 14/90.