

## Planning Scheme of Delegation

Following the publication of the Planning Committee agenda, the Council has been made aware of a further challenge to the legality of the changes proposed to the recommendation in option 2 which, as currently drafted states:

*A Local Member or Parish Council writes, or emails a request for a particular application to be considered by Planning Committee, sound planning reasons are given for why this is considered necessary and the request is accepted by the Joint Director of Planning and Economic Development, in consultation with the Chairman of Planning Committee (or Vice-Chair in his/her absence). **In the event that the view of the Chair of Planning Committee (or Vice-Chair in his/her absence) does not accord with the view of the Joint Director of Planning and Economic Development, the application will be determined by Planning Committee.***

Whilst it is appropriate for decisions to be delegated to an officer in consultation with a member, the delegated decision must ultimately remain that of the officer for it to be lawful. It is believed the challenge centres on the fact that there might be perceived to be an “automatic” referral of the matter to Committee in the event of the Chair of Planning and Planning Officer disagreeing on the route for decision. Arguably this amounts to the Chair of Planning being given a decision making capability that is inconsistent with the provisions of the Local Government Act (as the Chair of Planning is a non-executive Councillor) in circumstances where the officer considers the application should be determined by officers.

Whilst, on past performance, this likelihood is considered more theoretical than real, Officers accept it is important to have a lawful scheme of delegation and have therefore considered the matter further and offer the following options.

1. The delegation provisions above are amended to read as follows:

“A Local Member or Parish Council writes, or emails a request for a particular application to be considered by Planning Committee, and sound planning reasons are given for why this is considered necessary and the request is accepted by the Joint Director of Planning and Economic Development, in consultation with the Chairman of Planning Committee (or Vice-Chair in his/her absence).”

Footnote - Notwithstanding any decision is ultimately one for the officer himself/herself, the committee’s guidance in terms of decisions made in accordance with the delegation rules is that in cases which raise issues which are sensitive or controversial, the committee would expect the officer normally to refer the matter to the committee.

2. The receipt of a request for call in by the Parish Council or a member within 21 days of notification citing relevant material planning considerations why the application should be considered by Planning Committee (with any judgement on the determination of whether the call in identifies “relevant material planning considerations” being delegated to the Director of Planning) results in the application being referred to the planning committee for determination.

3. The Council establish a sub-committee (3 members) to consider all requests received for the call in of an application by Members or Parish Councils.
4. The receipt of a request for call in by a Parish Council or a member is referred automatically to the Planning Committee – with no requirement for a “cut off” time or assessment of the material planning considerations cited by the Parish or Member for seeking such a decision.
5. The receipt of a request for call in by a Parish Council or a member within 21 days of notification is referred automatically to the Planning Committee – with no requirement for the assessment of the material planning considerations cited by the Parish or Member for seeking such a decision.
6. Do nothing.

### **Considerations.**

In the last 12 months the Council has received some 70 call in requests from Members/Parish Councils. Officer review of such requests was introduced to provide a means by which those requests could be reviewed in consultation with the Chair/vice chair of the Committee to provide for the sensible management of Committee agenda's given government targets for application handling and the objective of making effective use of the Committee's time.

**Option 1** arises as a result of further concerns, and legal advice and reflects arrangements in a number of other authorities. The attached appendix to the Planning Committee report provides for a period of 21/28 days for such requests to be submitted from the Parish or local member respectively. It has three potential benefits over an automatic referral; firstly it provides for circumstances where officers professional view would be in line with the Parish or Member view (to support or oppose the development). Secondly, it provides a means by which the Local Planning Authority can manage requests from individual Cllrs or Parishes that might otherwise overwhelm the Committee agenda – with 45 Councillors and 106 Parishes there is a risk that Committee time may become devoted to one area/parish over another. Third, in the event of an automatic referral, Members and Parishes may find themselves lobbied robustly by applicants or objectors in order to exercise their “call in” provisions solely in order to remove a potentially unfavourable decision from officers - for example where pre-application advice has been negative.

**Option 2** would provide for an automatic referral of an item to committee provided that material planning considerations were made by the Parish/Member within 21 days of notification. This reflects the arrangements in Cambridge City Council's scheme of delegation as regards members only as they do not have any Parishes. The provisions seek to avoid vexatious or inappropriate reasons being cited (or no reasons at all) for the call in request and is important to help the Committee's understanding of the matter when they are considering it (and for the officers report to explore this matter). The citing of a reason for the call in would also enable the LPA to seek an “extension of time” with the applicant on the basis of a clear understanding of the local concern (and potentially avoid a “non-determination” or arguments of unreasonable behaviour by the LPA on appeal). Officers would include this “reason” within the Committee report. Given the definition of

material planning consideration is complex, it is considered that such a judgement should be made by the Chief Planner or their nominated officers. The “qualification” of 21 days is to avoid a situation where very late in an applications processing, requests are received that cause additional delay to the processing of applications – and enable the efficient forward planning of committee agendas.

**Option 3** would seek to establish a “sub-committee” of the Planning Committee of 3 members although the precise number would be a matter for members to determine. The meeting would consider all requests for call in - and the reasons cited. As a meeting of the Council, the meeting would be in public, with a requirement for agenda publication, reports and minutes of decisions. In SCDC, the meeting would also be open for public speaking, questions and petitions. This approach would be expensive to deliver – requiring planning officer, planning administration and democratic services time to support - and introduces a further democratic process with scope for confusion as to the purpose of the sub-committee meeting and the planning committee. For those applicants employing a planning consultant/architect (which make up the majority of current cases called in) the process would give rise to potential additional costs and anxiety. For this reason, officers do not support this option.

**Option 4** would see all applications automatically referred to Committee, even where there was no reason, or material planning consideration cited by the Member of Parish Council for their request and no time limit. Avoiding the need for any explanation or judgement by officers for the reasons, the automatic referral of an application would mean that applicants would not necessarily know the material planning considerations that had been cited to justify why their application had been referred/called in. This would not be consistent with the objective for transparency around decision making – and may lead to claims that the Council had acted unreasonably in the event of an appeal. Automatic referral would nevertheless avoid the need for any judgement to be exercised by officers on the basis for referral.

**Option 5** would propose the same “automatic referral” as option 4 above but would introduce a time limit to the automatic referral request – to assist with the early identification of applications requiring a Committee decision and use of the call in process at any time up until a decision which would have the effect of potentially delaying decisions and reducing certainty about the route for decision making.

**Option 6**, given the purpose behind the recommendations from officers and the advisory group, this option is not supported.

For the reasons set out above, officers would recommend that option 1 be pursued.

## **Recommendations**

It is recommended that Planning Committee:

(a) Agree the changes to the Planning Scheme of Delegation as detailed in Option 1 above namely to amend paragraph 1 in Appendix A to read as follows;

1. “A Local Member or Parish Council writes, or emails a request for a particular application to be considered by Planning Committee, and sound planning reasons are given for why this is considered necessary and the request is accepted by the Joint Director of Planning and Economic Development, in consultation with the Chairman of Planning Committee (or Vice-Chair in his/her absence).”

Footnote - Notwithstanding any decision is ultimately one for the officer himself/herself, the committee's guidance in terms of decisions made in accordance with the delegation rules is that in cases which raise issues which are sensitive or controversial, the committee would expect the officer normally to refer the matter to the committee.

(b) Agree the remainder of the changes in Appendix A.

(c) Decide whether to request officers to undertake a further review of the Parish and Member "call-in" process.