

REPORT TO: Council

21 May 2020

LEAD OFFICER: Monitoring Officer and Joint Director of Planning and
Economic Development

Planning Scheme of Delegation

Executive Summary

1. The Planning Committee, at its meeting held on 12 February 2020, received and considered the report of the from the Constitution Review Task and Finish Group, which provided the Committee with the amendments to the Planning Scheme of Delegation proposed by the Group.
2. Further options were also put to the members of the Planning Committee following a legal challenge and the Planning Committee agreed the changes to the Planning Scheme of Delegation as set out in Appendix A to this report.
3. This report seeks to approve the changes to the Planning Scheme of Delegation which were agreed by the Panning Committee.

Recommendations

4. It is recommended that Council: -
 - (a) Approves and adopts the changes to the Planning Scheme of Delegation as set out in Appendix A which was determined by Planning committee at its meeting on the 12th February and authorise officers to confirm the necessary changes to the constitution that have been made and to allow officers to proceed to take delegated decisions.

Reasons for Recommendations

5. Officers are recommending the change to the Planning Scheme of Delegation to reflect the statutory position and to protect the Council against further legal challenge.

Details

6. The Planning Scheme of Delegation was approved by Planning Committee on the 6th April 2016.

7. The Planning Committee decided that all planning applications are to be dealt with under delegated powers unless 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 Chairman of Planning in consultation with Officers.
8. In practice, the Chairman and Vice Chairman meets with officers regularly to consider requests for referral to Planning Committee. Once they have jointly concluded their deliberations, a record is signed by the Chairman and officer confirming the outcome.
9. The Constitution Review Task and Finish Group has reviewed the sections of the Constitution in relation to responsibility for functions.
10. The Task and Finish Group was advised by officers of the need to clarify that, where appropriate, decisions are delegated to officers, in consultation with the relevant non-executive chairman, rather than by the non-executive chairman, in order to reflect the statutory position. It is not lawful to delegate a decision to single member in this context.
11. Accordingly, the Constitution Review Task and Finish Group recommended that the Planning Committee correct the above anomaly by rewording the delegation as follows:

“Applications will be dealt with under delegated powers unless:

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, after consultation with the Chair of Planning Committee (or Vice-Chair in their absence).”
12. Correspondence was sent to all members of the Task and Finish Group from a member of the public challenging the proposed change on the basis that there would be a shift of the decision-making power from an elected member to a single officer.
13. The same individual has also challenged the then current arrangements for determining which applications go before Planning Committee, alleging that it was unlawful for them to be determined by a single member, even if the Chair.
14. The Leader of the Council, by way of correspondence dated 8th January 2020 to all Parish Councils, proposed that, in the unlikely event there is a disagreement between the Chairman of Planning Committee and the Joint Director of Planning and Economic Development on any application, it is automatically referred to Planning Committee for it to be considered and determined.
15. At its meeting on 4th February, the Constitution Review Task and Finish Group considered the proposed revisions to the Planning Scheme of Delegation and the Group agreed to recommend Planning Committee to amend the scheme of delegation as follows.

Applications for consent or permission under the Town and Country Planning Acts and Listed Buildings and Conservation Areas Acts shall be dealt with under delegated powers unless:

1. 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 Chair 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.

16. This recommendation to the Planning Committee was also challenged by the same individual.
17. 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 that the basis for the challenge centred 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. This could amount 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. In such circumstances such delegation would be unlawful.
18. Whilst, on past performance, this likelihood was considered more theoretical than real, Officers accept it is important to have a lawful scheme of delegation and gave members of the Planning Committee 5 additional options to consider which are attached as Appendix B to this report.
19. Having considered the reports from officers, Members of the Planning Committee resolved to amend the planning scheme of delegation in respect of this issue as follows.

“Applications for consent or permission under the Town and Country Planning Acts and Listed Buildings and Conservation Areas Acts shall be dealt with under delegated powers unless:

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.”

20. This too was challenged by the same individual, notwithstanding that he accepted that the proposed amended scheme of delegation would be lawful, on the basis that the

decision to amend the Planning Scheme of delegation needed to be considered by Full Council and adoption by the Planning Committee was insufficient.

21. Whilst the Council did not accept that it had erred in law as to how to amend this part of the scheme of delegation on the basis that the challenge raised issues of law and interpretation and to avoid unnecessary cost and uncertainty, it gave an undertaking that it would not take any delegated decision on an application that has been the subject of a call in request until the Planning Scheme of Delegation has been considered by full Council at its meeting on the 2nd April 2020. As a result of restrictions imposed on the holding of public meetings, this meeting did not take place. This report is accordingly being presented to this meeting of Council. The Council has given an undertaking not to determine “called-in” applications until Council has met and determined the matter.
22. It is important that the Council has a lawful scheme which is not tainted by any uncertainty as to its content or its method of adoption both to defend certain current judicial reviews but more importantly to ensure proper future decision making
23. For information, the Planning Service has also commissioned a review by the Planning Advisory Service of its three Planning Committee’s. The terms of reference for this review have been presented to the Planning Committee and include a review of call in procedures. The review has been delayed as a consequence of the Covid 19 restrictions but is due to continue later in the year and may result in further changes to the Councils procedures.

Options

24. Options available include:

1. Doing nothing and leaving the Planning Scheme of Delegation unamended, however given the clear indications from a third party, this would be likely to lead to a legal challenge on the basis that Scheme of Delegation had not been lawfully amended; or
2. Amending the Planning Scheme of Delegation in accordance with the decision of Planning committee at Appendix A of the report to protect the Council’s position (pending any further review of the Scheme of Delegation).
3. Amending the Planning Scheme of Delegation as per one of the other options contained in Appendix B.

Implications

25. In the writing of this report, taking into account financial, legal, staffing, risk, equality and diversity, climate change, and any other key issues, the following implications have been considered: -

Legal

26. S101 Local Government Act 1972 provides that a local authority may arrange for the discharge of any of their non-executive functions by a committee, a subcommittee or an officer of the authority.

Finance

27. The proposed changes to the Planning Scheme of delegation in accordance with Appendix A do not give rise to any significant additional financial obligations on the authority and can be covered within the existing budget for the shared planning service.

Appendices

Appendix A: Powers and Functions Delegated by the Planning Committee

Appendix B: Planning Scheme of Delegations – Options to Planning Committee

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