

COUNCIL 25 FEBRUARY 2015

1. PROPOSED REVISIONS TO PLANNING SCHEME OF DELEGATION

Submitted by: Head of Planning

Portfolio: Planning and Assets

Ward(s) affected: All

Purpose of the Report

To update the current Planning Scheme of Delegation to reflect recommendations arising following the recent Planning Peer Review.

Recommendation

That the revised Planning Scheme of Delegation set out in the Appendix to this report be adopted by the Council

1. **Background**

The Planning Peer Review Team gave a recommendation to the Council that it re-examine the Scheme of Delegation to allow the Planning Committee to focus on major applications. In giving their feedback the Review Team commented as follows

“Rates of delegated decisions have dropped below 90 per cent. This results in more applications being taken at the planning committee. During the on-site phase of the peer challenge we attended the planning committee which spent a long time discussing reserved matters applications. To ensure that the capacity of the committee is focused on strategic decision making we recommend that the Council reviews its codes and protocols to seek to increase rates of delegation to match the best in England.”

Cabinet on the 12th November in resolving to agree an Action Plan in response to the Planning Peer Review Team’s report agreed to the following action - that the Council should review its Scheme of delegation (of its Planning functions) with particular reference to telecom apparatus, consultations by other authorities and historic building grant applications

The Scheme of Delegations forms part of the Council’s Constitution and any changes made will therefore need to be approved by Full Council. The Scheme of Delegation is part of the legal framework set by the Council governing the way it conducts its business. An appropriate Scheme of Delegation supports good governance and budgetary compliance

The Planning Committee at its meeting on the 3rd February considered a report on the proposed changes and it is recommending to Council that the changes, set out in Appendix A to this report, be adopted by Council.

2. **Issues**

This report is to request the consideration of Council to changes to certain delegations.

3. The existing Scheme of delegations of planning functions

The Scheme lists an extensive number of functions and indicates whether these functions, or authority to exercise a particular power, are to be exercised by the Planning Committee, by the Executive Director of Regeneration and Development, or in certain instances by both of the above.

The focus of this report is mainly on the authority to deal with applications, although the authority to deal with certain types of applications makes up a relatively small part of the Scheme of Delegation insofar as Planning functions are concerned.

With respect to the planning applications the position at present is that applications broadly fall to be determined by the Executive Director - i.e. under delegated powers, unless they are for Major Development, as defined by the Department for Communities and Local Government (DCLG), for the demolition of any Listed Building (of whatever Grade), and for the alteration or extension of a Grade 1 or 2* Listed Building. Such applications **automatically** come before the Planning Committee, regardless of any member interest expressed or judgement by officers.

In addition to these criteria set out in the Scheme of Delegation, in the case of several delegated functions (with respect to applications) there is a right of two or more Members to 'call in' an application for determination by the Planning Committee. Such call-ins have to be made within 10 working days of the publication of the weekly list of applications received. Those who have called in an application are also provided, where there is the opportunity to do so, with the ability to withdraw such a call in (by the provision to them of a draft of the report to the Committee).

There are other criteria which lead to applications being brought to the Planning Committee – principally relating to issues of probity and transparency

As indicated above the Planning Peer Review Team made comment about the fact that the Planning Committee observed by them (on the 15th July 2014) considered applications for the approval of reserved matters of several Major Developments. Their view, it would appear, was that given that such developments had already outline planning permission the Committee, by considering the subsequent reserved matters, was not sufficiently focussed on strategic decision making. As Members will be aware an outline planning permission can reserve for subsequent decision making a number of matters – scale, layout, appearance, access and landscaping. Each of these terms is defined in legislation.

Your Officer's view is that to remove from the list of applications which automatically come before the Planning Committee those for the approval of reserved matters for major developments would not be justified – in that these are still applications for Major Development. There is however one suggested exception. In recent years, principally in order to defer the significant additional fees associated with of applications for full planning permission it has been the practice of some agents to make applications for outline planning permission with the **only** reserved matter being the landscaping details of the development. It is considered that recognising the limited likely interest of landscaping matters, and the often technical nature of judgements, it would be appropriate to no longer require such applications automatically to come before the Planning Committee. This is **Proposal No.1** within this report. Such applications could still of course be "called in".

At present all applications for the prior approval of telecommunication apparatus (i.e. those which do not require planning permission) automatically come before the Planning Committee. With respect this appears, to your Officer, to be serving, no clear purpose and whilst the number of such applications has varied considerably over time, they do insofar as they require Members of the Committee to read the reports upon them divert the attention of

Members, and a change to the Scheme of Delegation appears appropriate. This is **Proposal No.2** within this report.

Whilst not covered by the existing Scheme of Delegation Members may wish to note that it has been the practice of your Officer to automatically bring any applications for planning permission for telecommunication development to the Planning Committee for determination. Such a practice has been in line with a recommendation of the former Telecommunications Working Party which met in 2006, and a subsequent resolution of the Planning Committee at its meeting on the 14th March 2006. Your Officer's view is that such an approach is no longer appropriate in that the evidence is that telecommunication apparatus applications are, it would appear, no longer matters of such controversy as they may have been in the mid 2000's. Members if they wish will be able to call in such applications for consideration by the Planning Committee

As indicated above most of the delegated functions, at least with respect to applications, are subject to a right of call in. At present upon the receipt of sufficient number of call in requests, in writing and by the due date, the application, unless the call-in is subsequently withdrawn, proceeds to be determined by the Committee. In some authorities the Chairman has the right, reflecting their role with respect to the business of the Committee, to reject requests by Members that an application be considered by the respective Planning Committee. Whether the existence of this right would make any substantive difference to the business of the Committee is of course entirely a matter for speculation. Your Officer acknowledges that in the absence of agreed criteria (for the rejection of call -ins) it would place the Chair in a difficult position with respect to the Members who were wanting the application to be considered by the Committee. Devising and defining such criteria would be fraught with difficulty. Your Officer is not, for this reason, putting forward this proposal.

Examination of call in records suggest that whilst Members are strongly encouraged to speak to officers before submitting a call in, this does not happen in a significant number of cases. It is only speculation but this could be because the Members concerned know that they will be able to decide later on to withdraw their call in, or it may relate to difficulties officers and Members have in making contact at short notice for such discussions. There is the possibility that by lengthening the period (currently 10 days) to say 15 days, Members might feel more able to take a more considered view on whether or not to call in an application, and this could reduce the number of call ins coming to the Committee. The period within which an application can be called in commences upon the publication of what is termed the weekly list of applications received. Such lists are currently normally produced on the Friday of the following week - which can mean that an application does not appear on such a list until up to 11 days have passed – if it has been received and was valid on the preceding Monday. For an application to be found valid it has to go through various checks by Support officers and in the case of Major applications by Senior Planning Officers. To avoid a situation, with an extended 15 day call in period where it frequently became inevitable that if an application was called in it would not come to the Committee until after the 8 week date, a change in the day of the week when the weekly list is produced is essential. This will be challenging for the Service, but necessary. **Proposal No.3** is therefore to extend the call in period to 15 working days, with it becoming a precondition of a call in that each Member involved has spoken beforehand either to the Planning Officer or to the Development Management Team Leader.

As Members will note the existing scheme of delegation seeks to allow for the exercise of delegated authority only to where the decision is in accordance with the development plan and other relevant material considerations, most notably national guidance. The redrafting of this section of a general delegated authority requires updating to reflect current national guidance anyway and this is **Proposal No.4**.

Members will have noted that because of this requirement that delegated decisions must be in accordance with the development plan and other relevant considerations, including

national guidance, officers are bringing quite frequently to the Committee decisions on extensions to dwellings and equestrian developments because the conclusion reached, by officers, that the developments constitute inappropriate development within the Green Belt. It is considered that little value is added by this particular process in general so **Proposal No.5** would enable officers to determine, with respect to inappropriate development consisting of either domestic extensions or what might be termed small scale equestrian development, such applications. Again the possibility that such applications might be 'called in' remains.

The existing scheme of delegation requires that if the Council is consulted, by another adjoining Local Planning Authority, or by the County Council, upon any application for Major Development, determination of the Council's comments can only be made by the Planning Committee. Given that the Borough Council is not acting as the Local Planning Authority in such instances it would appear unnecessary for the Planning Committee to be asked for its views on consultations on applications for approval of reserved matters – the Borough Council having already had the opportunity to comment on the principle of the development at Outline stage. This is **Proposal No.6**. Such consultations are not subject to a right of 'call in'.

The Government is strongly promoting the use of Planning Performance Agreements by Local Planning Authorities. Such agreements are entered into by applicants and Local Planning Authorities and deal with matters of process – for example the timescale within which an intended application is to be brought to the Committee, or how quickly an applicant is to respond to requests for additional information. In that there is perhaps some uncertainty as to whether there is a clear authority to enter into such agreements, the agreed Action Plan arising from the Planning Peer Review includes an action that this uncertainty should be resolved and this is **Proposal No.7**.

Some minor miscellaneous amendments to the existing scheme of delegated – for example including for the first time the authority to determine applications for certificates of lawfulness of works to Listed Buildings (**Proposal No.8**) – arising from a recent amendment to the Listed Buildings and Conservation Areas Act – have been included in the proposals.

The Action Plan following the Planning Peer Review indicated that particular consideration should be given to whether decisions on the award of Historic Building Grants should continue to be made by the Planning Committee. It can be confirmed that such decisions, according to the Council's Constitution, fall within the remit of the Planning Committee, rather than Cabinet. The authority to determine such applications is not referred to in the existing scheme of delegations (which includes delegations both to the Planning Committee and the Executive Director). The current procedure is that the Planning Committee receives a report on each application, and is provided with the views of the Council's Conservation Advisory Working Party on that application. Given the relatively limited number of such applications per annum, the limited resources available within the Heritage Fund, and the difficulty of devising a set of criteria to determine which projects should receive funding and which should not (beyond those criteria which are already agreed) it is considered that such decisions could remain within the remit of the Planning Committee, without harm to the objective of a focus on applications for Major development and no change is recommended in this respect.

4. The proposed changes

In summary the proposals being recommended to Council, which have been endorsed by the Planning Committee, and are indicated in Appendix A are as follows

Proposal No.1 – That Reserved Matters applications for Major development, where the only reserved matter is landscaping, would not automatically require to come before the Planning Committee

Proposal No.2 - That applications for telecommunication apparatus would not automatically require to come before the Planning Committee

Proposal No.3 – To extend the call in period to 15 working days, with it being a precondition of a call in that at least each Member involved has spoken beforehand either to the Planning Officer or to the Development Management Team Leader about the application.

Proposal No.4 – To redraft the general statement concerning the requirement for delegated decisions to be made in accordance with the development plan and other material considerations

Proposal No.5 – That notwithstanding Proposal No.4 Officers have delegated authority to determine applications for extensions to dwellings and small scale equestrian developments, even if they are considered to constitute inappropriate development in Green Belt terms

Proposal No.6 – That consultations from adjoining Councils or the County Council on applications for the approval of reserved matters of outline planning permissions for Major Development are able to be responded to by the Executive Director

Proposal No.7 – That the authority to enter into a Planning Performance Agreement be given to the Executive Director

Proposal No.8 – That the authority to determine applications for certificates of lawfulness of works to Listed Buildings be given to the Executive Director