

## CABINET

18<sup>th</sup> October 2017

### DELEGATION FOR NEIGHBOURHOOD PLANNING

**Submitted by:** Executive Director: Regeneration & Development

**Portfolio:** Planning and Housing

**Ward(s) affected:** All wards

#### **Purpose of the Report**

For Cabinet to consider and approve delegated decision making arrangements for Neighbourhood Planning to allow the Council to meet statutory timescales.

#### **Recommendation**

1. That all decisions (see Table 1) involving any aspect of the statutory function relating to Neighbourhood Planning be delegated to the Executive Director, Regeneration & Development in consultation with the Cabinet Member responsible for the Planning & Housing Portfolio, unless:
  - that stage of the Neighbourhood Planning process has resulted in significant public objection and/or the decision is publicly contentious in the opinion of the Cabinet Member; or
  - the decision is considered to be a Key Decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising two or more wards.

Then such decision shall be delegated to the Cabinet Member responsible for the Planning and Housing Portfolio.

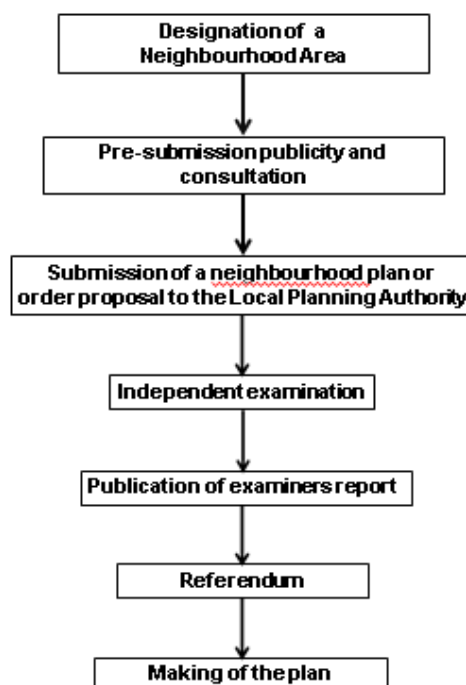
#### **Reasons**

Recent legislative changes have introduced time limits on certain stages of the Neighbourhood Plan production process, including the timing of the referendum and the making (adoption) of the plan. In the interests of timely and efficient decision making, it is requested that decisions involving any aspect of the executive statutory function relating to Neighbourhood Planning be delegated to the Executive Director, Regeneration & Development in consultation with the Cabinet Member. Decisions will in most cases be largely non-contentious given that the responsibility of the Local Planning Authority is broadly limited to administering regulatory stages and providing technical advice. If decisions are potentially significant and/or contentious, then decisions will be taken by the Cabinet Member.

Without delegation, it would be very difficult to meet statutory deadlines introduced by recent Neighbourhood Planning legislation, undertake the required consultation periods within parts of the process and any turnaround time for reports before decisions can be made.

## 1. Background

- 1.1 Neighbourhood Planning was introduced through the Localism Act 2011 and enables local communities to produce neighbourhood plans, setting a vision and policies for the future development of their area.
- 1.2 To date five neighbourhood areas have been designated in the Borough and all are currently working on the production of draft plans. Once 'made', a neighbourhood plan forms part of the statutory development plan. Planning applications submitted in areas that have a sufficiently advanced neighbourhood plan<sup>1</sup> will be assessed against the policies that it contains.
- 1.3 The Council has a statutory duty to support the production of Neighbourhood Plans. This support includes designating Neighbourhood Areas, publicising submitted plan proposals and organising the examination and referendum. The Council's responsibilities are generally administrative or technical in nature, for example, advising on general conformity with the development plan, checking that neighbourhood plans have followed correct procedures and arranging the examination/referendum.
- 1.4 On the 16<sup>th</sup> September 2015, Cabinet agreed to delegate decisions on the designation of neighbourhood areas (one of the first steps in the process of preparing a neighbourhood plan) to the Cabinet Member with responsibility for the Planning and Housing Portfolio. The delegated powers secured have been successfully used in order to designate three neighbourhood areas, namely: Keele; Betley, Balterley & Wrinehill and the Madeley Neighbourhood Areas.
- 1.5 Beyond area designation, neighbourhood plans have to go through a number of key stages before they are made and this are summarised in the flowchart below.



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<sup>1</sup> [Duty to have regard to a post-examination Neighbourhood Plan](#)

- 1.6 Since the Cabinet decision in 2015, the Government has continued to support Neighbourhood Planning and the rights of communities to guide and shape their areas. The Neighbourhood Planning Act 2017, the Housing and Planning Act 2016 and other changes to Regulations in 2016 and 2015 have introduced a number of legislative changes which are designed to speed up and simplify the neighbourhood planning process.
- 1.7 The effect of recent legislative changes means that certain decisions must be made within prescribed time periods, including:
- the designation of a neighbourhood area (for parish/town councils, designation required as soon as possible).
  - the designation of a neighbourhood forum (13/20 weeks);
  - the decision by a local planning authority on whether to put a neighbourhood plan to referendum following receipt of the report of the independent examiner (5 weeks);
  - the period for a local planning authority to seek further representations and make a final decision, where they propose to make a decision which differs from that recommended by the examiner (6 weeks additional consultation plus 5 weeks to issue decision);
  - the time period within which the referendum must be held, following the decision that the plan proposal should be put to referendum (56/84 working days);
  - the time period for a local planning authority to bring a neighbourhood plan into force after it has been approved in each applicable referendum (8 weeks).
- 1.8 National Planning Policy Guidance advises that Local Planning Authorities should make every effort to conclude each stage of the neighbourhood planning process promptly. In addition, measures have recently been introduced to enable the Secretary of State to intervene if a Local Planning Authority does not make decisions in a timely manner.

## **2. Issues**

### Decision Making Process

- 2.1 The council's constitution makes no provision for the determination of decisions relating to Neighbourhood Planning.
- 2.2 National Planning Practice Guidance states that a council's Executive body (i.e. Cabinet) takes the decisions relating to Neighbourhood Planning (where the authority operates executive arrangements as in Newcastle) but that it may delegate this duty to others in the authority, for example a Cabinet sub-committee or the relevant Portfolio Holder.
- 2.3 Advice has been sought from the Council's legal team who have confirmed that Cabinet has the relevant authority to delegate decision making responsibilities in relation to neighbourhood planning to others in the authority. Any future delegations which need to be included in the Scheme of Delegation would consequently be reported to Council for information.
- 2.4 Cabinet approval was previously sought in September 2015 to enable neighbourhood area applications to be decided by the Cabinet Member with responsibility for the Planning and Housing Portfolio. This has worked successfully with 3 areas being designated utilising these powers. If the Local Planning Authority is to meet the statutory timescales relating to different stages of the neighbourhood planning process

as neighbourhood plans in the Borough progress, further clarification in terms of the decision taking framework is required.

#### The role of the Local Planning Authority and Individual Members

- 2.5 Neighbourhood plans are produced by communities and currently all are being led by parish councils in the Borough. The Borough Council's role as the Local Planning Authority is largely technical in nature, for example advising on conformity with the Development Plan and checking that Plans have followed correct procedure. Neighbourhood Plans are required to be in general conformity with the adopted Development Plan but beyond this, the Local Planning Authority does not have a mandate to provide a political steer on the content of an emerging plan.
- 2.6 Decisions on neighbourhood plans will in most cases be largely technical or administrative and non-contentious. Each application and submission will be discussed with the Portfolio Holder. Individual Members will be kept informed of decisions affecting their ward.
- 2.7 The proposal below allows for key decisions and decisions in circumstances where there are potentially significant or contentious issues to be decided by the Cabinet Member.

#### Future Implications for the Borough Council

- 2.8 Whilst Neighbourhood Plans are prepared by bodies external to the Borough Council, it will be the Borough Council's responsibility to 'make' (i.e. adopt) the Neighbourhood Plans and to implement their policies through subsequent decisions on planning applications submitted for consideration. Neighbourhood Plans must however be in general conformity with national planning policy and the approved development plan for the area. In Newcastle-under-Lyme this currently means the adopted Core Spatial Strategy and the 'saved' policies from the Newcastle-under-Lyme Local Plan 2011.
- 2.9 The preparation of a Joint Local Plan for Newcastle-under-Lyme and Stoke-on-Trent City Council is underway. If neighbourhood plans are made in advance of the Local Plan, there is potential for neighbourhood plan policies to become out of date if they were to conflict with policies of a Local Plan that is subsequently adopted. It may be necessary for Qualifying Bodies (QB's) to review their neighbourhood plans in these circumstances.

### **3. Proposal and Reasons for Preferred Solution**

- 3.1 It is proposed to delegate matters of an administrative or technical nature to the Executive Director, Regeneration & Development. Other matters are delegated in consultation with the Cabinet Member. The table at Appendix 1 identifies the various stages of neighbourhood planning and the delegation sought.

### **4. Financial and Resource Implications**

- 4.1 The Borough Council has a statutory to advise and assist in the preparation of Neighbourhood Plans. The processes set out in this report involve staff time and costs including providing ongoing professional advice and technical support, sharing evidential information and data, organising formal public consultation periods and making the arrangements for the examination and referendum of the Neighbourhood

Plans. The Council currently employs a temporary part-time Neighbourhood Planning Officer (0.6FTE) to administer and support this process.

4.2 Funding for Neighbourhood Planning is currently supported by grants available from the Department for Communities and Local Government (DCLG) which is reviewed on an annual basis. The Borough Council can currently claim:

- Area and Forum designation: LPAs can claim £5,000 for the first five neighbourhood areas and first five forums designated. To date, the Council has submitted 5 claims relating to the designation of five neighbourhood areas (£25,000 in total, £5,000 per area).
- For all areas: LPAs can claim £20,000 once they have set a date for a referendum following a successful examination.
- Business areas: LPAs can claim a further £10,000 once they have set a date for a referendum following a successful examination.
- Neighbourhood Development Orders and Community Right to Build Orders: LPAs can claim £20,000 in relation to NDO's and/or CRtBO's for each neighbourhood planning area per year. The claim can be made once the date for the referendum on the orders has been set.
- Modification of a neighbourhood plan that is in force: LPAs will be able to claim £10,000 once they have set a date for a referendum following a successful examination for a modified neighbourhood plan, when a plan is already in force for that area.

4.3 All payments are retrospective and any costs are therefore funded upfront from the Council's existing resources. The extension of delegated powers would achieve time savings by reducing the number of reports being prepared and considered.

## **5. Outcomes Linked to Corporate Priorities**

5.1 The preparation and implementation of Neighbourhood Plans in the Borough will contribute to the following corporate priorities:

- A clean, safe and sustainable Borough
- A Borough of opportunity
- A healthy and active community
- A co-operative council delivering high quality, community driven, services

5.2 The designations are not expected in themselves to have a direct impact on the council's corporate priorities.

## **6. Legal and Statutory Implications**

6.1 Neighbourhood Planning is part of Government policy to empower local communities to take forward planning proposals at a local level as outlined in Section 116 of the Localism Act, 2011. The Act and the Subsequent 2012 Regulations (as amended) confer specific functions on Local Planning Authorities in relation to Neighbourhood Planning. The Council is required to adopt procedures to process Neighbourhood Plans and has a statutory duty to make decisions within prescribed timeframes.

6.2 Neighbourhood Planning is one of the Council's executive functions and all decisions must be made accordingly. Cabinet has the ability to delegate some or all of these decisions to an Officer and /or to an Individual Cabinet Member.

## **7. Major Risks**

7.1 If Cabinet were to continue as the decision making body for decisions relating to Neighbourhood Planning, this would make it very difficult to meet the statutory deadlines enforced by the updated Neighbourhood Planning legislation due to the required consultation periods within parts of the process and the turnaround time for writing and signing off reports before a decision could be made. Failure to comply with statutory deadlines could result in intervention by the Secretary of State in the neighbourhood planning process in the Borough.

## **8. Appendices**

1. Table showing the stages of Neighbourhood Planning and the delegations sought

## **9. Background information**

1. Cabinet Report 19 September 2015

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Table 1: Stages of Neighbourhood Planning and delegation sought

Stage	Timescale/ Comments	Proposed delegation
<p><b>Publication and determination of Neighbourhood Area Applications</b></p> <p>1. Designation and publication of a Neighbourhood Area where the Qualifying Body (QB) is a Parish or Town Council and the proposed Neighbourhood Area consists of the whole of the Parish/ Town Council boundary.</p> <hr/> <p>2. Where the QB is a Forum (or the area does not consist of the whole of a Parish/ Town Council boundary)</p>	<p>Designation of the area should take place as soon as possible upon receipt of application.</p> <p>The Borough Council has no discretion to amend the boundary provided that the application is valid and complete.</p> <p>No public consultation is required prior to the designation of the area.</p> <hr/> <p>Decision on the application must be made within 13 weeks, or 20 weeks where the application area falls within the areas of two or more local planning authorities.</p> <p>This includes a period of 6 weeks public consultation. Time limits do not apply where a part of an area is already designated or more than one application has been made in overlapping areas.</p>	<p>Executive Director, Regeneration &amp; Development.</p> <p>All relevant Ward members will be notified of the decision to designate the Neighbourhood Area.</p> <hr/> <p>Executive Director, Regeneration &amp; Development in consultation with the Cabinet Member.</p> <p>All relevant Ward members will be notified of the application and decision.</p>
<p><b>The provision of informal support</b></p> <p>The provision of informal technical support and advice to QB's on draft neighbourhood plans.</p>		<p>Executive Director, Regeneration &amp; Development.</p>
<p><b>Provision of Strategic Environmental Assessment and Habitats Regulations Screening, where requested.</b></p>		<p>Executive Director, Regeneration &amp; Development.</p>

<p><b>Provision of formal comments to the QB on the pre-submission draft plan.</b></p> <p>(Regulation 14)</p>	<p>The Borough Council has 6 weeks once the consultation period has commenced to provide comments on the draft plan to the Qualifying Body.</p>	<p>Executive Director, Regeneration &amp; Development.</p> <p>All relevant Ward members will be notified of the consultation.</p>
<p><b>Accepting a submitted Neighbourhood Plan for public consultation.</b></p> <p>(Regulation 15/16)</p>	<p>Where a QB submits a plan proposal to the Borough Council, the submitted documents will be checked to ensure that they comply with all relevant legislation.</p> <p>If the plan meets the legal requirements, the plan proposal will be publicised for a minimum of 6 weeks and responses will be collated.</p>	<p>Executive Director, Regeneration &amp; Development.</p> <p>All relevant Ward Members will be notified.</p>
<p><b>Appointment of independent examiner and examination of plan.</b></p> <p>(Regulation 17)</p>	<p>Appointment of an independent examiner in conjunction with the QB.</p> <p>Make arrangements for the examination and for the provision of documents to the examiner.</p>	<p>Executive Director, Regeneration &amp; Development.</p>
<p><b>Publication of the Examiners Report</b></p>	<p>Publish final examiners report on website.</p>	<p>Executive Director, Regeneration &amp; Development.</p>
<p><b>Decision on examiners recommendation</b></p>	<p>Within 5 weeks of receiving the examiner's report, or in accordance with the timescale agreed within the QB, a decision will be made by the Borough Council as to whether or not the draft neighbourhood plan meets the legal tests (basic conditions) and whether or not a referendum should be held.</p> <p>Where the Borough Council proposes to make a decision that differs from that of the Examiner, additional consultation must be undertaken in accordance with the regulations for a period of six weeks with the final decision being issued within five weeks of the end of that consultation period.</p>	<p>Executive Director, Regeneration &amp; Development in consultation with the Cabinet Member.</p> <p>All Ward Members will be notified.</p>



	Publish decision statement.	
<b>Organisation of Referendum</b>	<p>A referendum must be held within 56 working days of the Borough Council's decision that the plan proposal should proceed to a referendum; or 84 working days where there is a business referendum, or where the area falls within more than one LPA.</p> <p>If there is opportunity to combine the referendum poll with another poll that is due to be held within three months of the end of the 56 or 84 day period, then this period will be extended accordingly.</p> <p>These time limits do not apply where there are unresolved legal challenges on the decision to hold a referendum.</p>	<p>Executive Director, Regeneration &amp; Development in conjunction with Electoral Services.</p> <p>All relevant Ward Members will be notified.</p>
<b>Decision to 'make' a neighbourhood plan</b>	<p>The decision to make the plan has to be made within 8 weeks of the result of the referendum, unless there are unresolved legal challenges.</p>	<p>Executive Director, Regeneration &amp; Development in consultation with the Cabinet Member where the referendum result is positive.</p> <p>In all other cases – Cabinet Member.</p> <p>All relevant Ward Members will be notified.</p>