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North Somerset Council

ITEM 14

REPORT TO THE PLANNING AND REGULATORY COMMITTEE

DATE OF MEETING: 12 APRIL 2017

SUBJECT OF REPORT: UPDATED DELEGATION ARRANGEMENTS FOR PLANNING APPLICATIONS

TOWN OR PARISH: ALL

OFFICER/MEMBER PRESENTING: HEAD OF DEVELOPMENT MANAGEMENT

KEY DECISION: NO

RECOMMENDATIONS

That the proposed changes to the Protocol and Code of Practice as set out in Annex B to this report are **AGREED** with immediate effect.

SUMMARY OF REPORT

The delegation arrangements have not been reviewed since 2014. A number of changes are proposed in response to improve the efficiency of the process and to respond to various organisational, financial and operational issues. The proposed updated Protocol and Code are attached as Annex B.

1. POLICY

The regular review of processes and practices is required to meet Corporate Plan's aim to be a transformed council which is modern and innovative with excellence in resource management. Ensuring speedy, proportionate and efficient decision making processes is also consistent with Government expectations for the delivery of new development through the planning system. Effective delegation is fundamental element of efficient management systems.

2. DETAILS

The Council Constitution delegates functions of the local planning authority, amongst other matters, to the Director of Development and Environment. This includes the authorisation of officers to exercise functions in accordance with statutory provisions. The Head of Development Management and other senior officers within the Development Management

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Group exercise these delegations in the name of the Director, including the function to make decisions on planning applications.

Certain applications are automatically referred to Committee for decision under an approved procedure set out in “The Protocol for Delegating Planning Decisions to Officers” agreed by the Planning and Regulatory Committee. The current version (see Annex A) was last updated by the Committee in July 2014.

The Code of Practice which is attached to the Protocol explains how members are notified of applications and how they can refer an application to Committee.

The Protocol makes clear the applications which will be referred to Committee automatically. It covers applications by certain staff, certain sorts of Council application, applications which are recommended for approval contrary to development plan policy, and applications where the decision would conflict with an objection received from certain national organisations. It also allows the Director of Development and Environment to refer any application to Committee when he considers it appropriate to do so.

The proposed changes are set out in the updated Protocol and Code in Annex B to this report where the proposed changes are shown with deleted text crossed through and new text in bold. For comparison, the full current document is reproduced in Annex A.

Council applications

It is proposed to give clarification about the circumstances under which Council applications are referred to Committee. This is because there has been some uncertainty as to how single letters signed by multiple signatories (which can include petitions) are handled. The proposal is that a single letter signed by 10 or more signatories from addresses in North Somerset be added to the criteria for triggering referral to Committee. The definition is also clarified to exclude Lawful Development Certificates on the basis that they are judgements of planning law rather than planning merits or impact.

Departures from the Development Plan

Recent experience has shown that a number of applications have had to be determined by the Committee on the basis of the fact that they are departures from the development plan even though the Ward Member is satisfied with the officer recommendation. It is proposed therefore to limit the automatic referral of “departures” only to applications for major developments on the basis that individual Ward Members can still exercise their own right of referral for other applications should they so wish. “Major” applications are defined in the planning regulations and this definition is reproduced for clarity.

Member illness

Currently the delegation arrangements are unclear on how committee referrals should be handled in instances where the ward member is unavailable due to long term illness. It is proposed that this is addressed by introducing a process whereby another councillor may be authorised to act on their behalf by the relevant Party Group Leader.

Statutory consultees

Currently, applications must be referred to Committee if the recommendation conflicts with an objection received from Historic England, Natural England, the Environment Agency or

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Highways England. It is increasingly the case that such objections can be resolved but this can conflict with the need to meet deadlines for producing Committee reports (which have to be prepared at least 2 weeks in advance of the Committee). This can result in lengthy Update Sheets being submitted to Committee shortly before the meeting and abortive time in producing the original Committee report. It is therefore proposed to remove the automatic referral of applications where there is an objection from one of the listed statutory consultees on the basis that individual Ward Members can still exercise their own right of referral should they so wish.

Progressing legal agreements

From time to time, applicants can delay progress on drafting S106 agreements. This impacts on speed of decision making and delivery. As an incentive to make quicker progress, it is proposed to introduce a mechanism whereby officers in consultation with the Chairman, Vice Chairman and Ward Member(s) have authority, without further referral to Committee, to refuse an application if the S106 has not progressed. It is envisaged that this authority would rarely be required but would aid negotiation.

Notes

Note 6 reflected wording which is no longer in the constitution and is proposed to be deleted from the Protocol to ensure consistency.

Code of Practice

The proposed changes are intended to continue to ensure that Committee time is not taken up by uncontentious cases which can be resolved by other means. Members are encouraged to discuss applications with officers prior to referring them to Committee and it is suggested that reasons are required when a referral is made. This would give greater clarity to the process and allow those involved with the application an opportunity to consider and respond to the issues raised.

As part of the need to find efficiency savings, processes and procedures need to be kept continually under review. The process by which councillors are notified of the first letter of objection takes a significant amount of staff time (and therefore cost) to administer and as a consequence can add delay to other parts of the process. There are more effective ways of members being able to track controversial applications via the case officer or website and in view of this and the need to find cost savings it is proposed to no longer notification of the first letter of objection.

3. CONSULTATION

Informal consultation has taken place with the Committee Chairman and Vice Chairman, the of Planning and Regulatory Committee, the Head of Legal and Democratic Services and relevant officers.

4. FINANCIAL IMPLICATIONS

An efficient delegation system enables effective use to be made of resources and reduces costs involved in extending Committee time unnecessarily.

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5. RISK MANAGEMENT

None.

6. EQUALITY IMPLICATIONS

Decisions on planning applications are governed by published law and procedure. Access issues are taken into account in all planning decisions.

7. CORPORATE IMPLICATIONS

Article 6 of the Human Rights Act 1998 gives the right to a fair and public hearing.

8. OPTIONS CONSIDERED

Placing more applications before Committee for decision.

AUTHOR

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BACKGROUND PAPERS

Scheme of Delegation set out in the Council's Constitution
Reports to Planning and Regulatory Committee
LGA "Probity in Planning" 2013

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Annex A

THE PROTOCOL FOR DELEGATING PLANNING DECISIONS TO OFFICERS

Approved by the Planning and Regulatory Committee 9 July 2014

All applications made under the Town and Country Planning Act (as amended) including applications for planning permission, listed building consent, consent to display and advertisement, Conservation Area Consent and Hazardous Substances Consent are delegated to the Director of Development and Environment to decide with the following exceptions which will be determined by the relevant Planning and Regulatory Committee.

- Any application within a Councillor's ward which that Ward Councillor requests be decided by Committee in accordance with the code of practice.
- Any application which may have significant impact on a Ward ,other than the Ward in which the application is sited , if the Ward councillor for the ward significantly impacted by the development refers the application to the committee in accordance with the code of practice.
- Applications submitted by or on behalf of the Chief Executive, a Director, Assistant Director of any Directorate (or equivalent); or a Head of Service in Development and Environment other than applications (a) made on behalf of the Council or (b) applications for the enlargement, improvement or other alteration of a dwelling house where no objections have been received.
- Applications submitted by or on behalf of any elected member of North Somerset Council other than applications for the enlargement, improvement or other alteration of a dwelling house where no objections have been received.
- Applications (other than applications for the enlargement, improvement or other alteration of a dwelling house where no objections have been received) submitted by or on behalf of any member of staff who works in either the Development Management Group or who has advised the Development Management Group on planning applications within the 12 months preceding the application.
- Applications submitted by or on behalf of North Somerset Council or on land owned or part owned by the Council where that application is either more than 1000sq.m in floor area or site area; or where the total number of residential units proposed is 10 or more; or where 10 or more letters raising material planning comments have been received where those comments are contrary to the officer's recommendation.
- Any application where it is recommended that permission be granted contrary to the objectives of the development plan.

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- Any application which the Director of Development and Environment considers should be decided by Committee.
- Applications where the decision would conflict with an objection received from English Heritage, Natural England, the Environment Agency or the Highways Agency.

Notes

1. For the avoidance of doubt, any application where it is recommended that permission be granted contrary to the objectives of the development plan will be referred to the Planning and Regulatory Committee for decision regardless of the status or nature of the applicant.
2. Applications submitted by the spouse or partner of a Councillor or staff member to whom the protocol applies will be treated as if they had been made by the Councillor or staff member personally.
3. Should there, in any individual case, be a doubt over the interpretation or transparency of these arrangements, the Head of Development Management or the relevant Service Manager in the Development Management Group (in consultation with the Chairman of the Planning and Regulatory Committee if appropriate) will decide whether the application ought to be referred to the Committee for decision.
4. The following matters are reserved to the Planning and Regulatory Committee for decision:-
 - (a) applications which are considered by the Director of Development and Environment to be inconsistent with the Council's planning policies;
 - (b) applications which in the opinion of the Chairman of the Planning and Regulatory Committee (or in his/her absence the Vice-Chairman) are controversial or inconsistent with the Council's planning policy;
 - (c) revocation orders and planning applications related thereto.
5. The powers delegated to the Director are exercised on a day to day basis by the front line managers responsible for the running of the service. These are the Head of Development Management, the Service Managers in the Development Management Group and their nominated deputies.

THE CODE OF PRACTICE FOR REFERRAL OF PLANNING APPLICATIONS AND ENFORCEMENT CASES BY COUNCILLORS TO COMMITTEE

- Ward Members are notified weekly in writing by e-mail of all planning applications received in their ward.

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- Ward Members are then advised by e-mail of the first letter of objection received for each application in their ward.
- All letters of support and objection are displayed on the Council's website.
- The Case Officer will, by appointment, be available to discuss any current planning application with the relevant Ward Member(s).
- Members may request that any application is referred to the Planning and Regulatory Committee so long as the application site is within the Ward they represent or the application is in an adjoining Ward and significantly affects the Ward they represent, the request is made in writing and provided the Director of Development and Environment's authorised representative has not already countersigned the case officer's written recommendation.
- The Member's request must be made in writing by letter or e-mail to the case officer, Service Manager and Development Management group general e-mail address
- Members may qualify their request so that the application need only be referred to the Planning and Regulatory Committee if the officer's recommendation is contrary to the Member's view.
- If the application involves an enforcement issue, it will be treated no differently from other planning applications.
- Enforcement cases may only be referred to a Committee by the Chairman of the Planning and Regulatory Committee, the Head of Development Management or the Delivery and Enforcement Service Manager.

All decisions made under delegated powers are circulated monthly to councillors

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Annex B

THE PROTOCOL FOR DELEGATING PLANNING DECISIONS TO OFFICERS

Propose to be updated April 2017

Proposed additions are shown in **bold text** with deleted text crossed through.

All applications made under the Town and Country Planning Act (as amended) including applications for planning permission, listed building consent, consent to display an advertisement, ~~Conservation Area Consent~~ and Hazardous Substances Consent are delegated to the Director of Development and Environment to decide with the following exceptions which will be determined by the relevant Planning and Regulatory Committee.

- Any application within a Councillor's ward which that Ward Councillor requests be decided by Committee in accordance with the code of practice
- Any application which may have significant impact **within** ~~on~~ a Ward, other than the Ward in which the application is sited, if the Ward councillor for the ward significantly impacted by the development refers the application to the committee in accordance with the code of practice.
- Applications submitted by or on behalf of the Chief Executive, a Director, Assistant Director of any Directorate (or equivalent); or a Head of Service in Development and Environment other than applications (a) made on behalf of the Council or (b) applications for the enlargement, improvement or other alteration of a dwelling house where no objections have been received.
- Applications submitted by or on behalf of any elected member of North Somerset Council other than applications for the enlargement, improvement or other alteration of a dwelling house where no objections have been received.
- Applications (other than applications for the enlargement, improvement or other alteration of a dwelling house where no objections have been received) submitted by or on behalf of any member of staff who works in either the Development Management Group or who has advised the Development Management Group on planning applications within the 12 months preceding the application
- Applications (**other than applications for Lawful Development Certificates**) submitted by or on behalf of North Somerset Council or on land owned or part owned by the Council where that application is either more than 1000sq.m in floor area or site area; or where the total number of residential units proposed is 10 or more; or where 10 or more letters raising material planning comments have been received where those comments are contrary to the officer's recommendation; **or where a single letter signed by 10 or more signatories from different addresses in**

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North Somerset raising material planning comments has been received and those comments are contrary to the officer's recommendation.

- Any application **for major development*** where it is recommended that permission be granted contrary to the ~~objectives of~~ the development plan.
- Any application which the Director of Development and Environment considers should be decided by Committee.
- ~~Applications where the decision would conflict with an objection received from English Heritage, Historic England, Natural England, the Environment Agency or the Highways England Agency.~~

Applications where the Planning and Regulatory Committee has resolved to grant planning permission subject to the applicant entering into a planning obligation (such as a S106 legal agreement) and where the required obligation is not completed either:

- a) **within 24 weeks (168 days) of the date when the application was first received as a valid application; or**
- b) **before ten working days prior to any extended target date previously agreed in writing by the applicant**

may be delegated to the Director of Development and Environment to determine in consultation with the Chairman, Vice-Chairman and Ward Member(s) without further reference to the Committee on the basis of there being no planning obligation

* "major development" means development involving any one or more of the following—

- (a) the winning and working of minerals or the use of land for mineral-working deposits;
- (b) waste development;
- (c) the provision of dwellinghouses where —
 - (i) the number of dwellinghouses to be provided is 10 or more; or
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (e) development carried out on a site having an area of 1 hectare or more;

Notes

1. For the avoidance of doubt, any application **for major development** where it is recommended that permission be granted contrary to the ~~objectives of the~~ development plan will be referred to the Planning and Regulatory Committee for decision regardless of the status or nature of the applicant.

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2. Applications submitted by the spouse or partner of a Councillor or staff member to whom the protocol applies will be treated as if they had been made by the Councillor or staff member personally.
3. Should there, in any individual case, be a doubt over the interpretation or transparency of these arrangements, the Head of Development Management or the relevant Service Manager in the Development Management Group (in consultation with the Chairman of the Planning and Regulatory Committee if appropriate) will decide whether the application ought to be referred to the Committee for decision.
4. **In the event that a Ward Member is unavailable due to long term illness the relevant Party Group Leader may authorise another Councillor to exercise the absent Ward Member's powers to request applications be decided by Committee as set out in the Protocol for the period of their absence.**
5. **Applications where the decision would conflict with an objection received from Historic England, Natural England, the Environment Agency or Highways England will normally be notified by the case officer to the relevant Ward Member before a decision is made to enable the member to decide whether to refer the application to the Committee for decision.**
- ~~6. The following matters are reserved to the Planning and Regulatory Committee for decision:
 - a) applications which are considered by the Director of Development and Environment to be inconsistent with the Council's planning policies;
 - b) applications which in the opinion of the Chairman of the Planning and Regulatory Committee (or in his/her absence the Vice Chairman) are controversial or inconsistent with the Council's planning policy;
 - c) revocation orders and planning applications related thereto.~~
- 6 The powers delegated to the Director are exercised on a day to day basis by the front line managers responsible for the running of the service. These are the Head of Development Management, the Service Managers in the Development Management Group and their nominated deputies.

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- Ward Members are notified weekly in writing by e-mail of all planning applications received in their ward.
- ~~• Ward Members are then advised by e-mail of the first letter of objection received for each application in their ward.~~
- The relevant planning officer will update Ward Members on any individual application as requested.
- All letters of support and objection are displayed on the Council's website until the application has been determined.
- The Case Officer will, by appointment, be available to discuss any current planning application with the relevant Ward Member(s). **Members are encouraged to discuss applications with the Case Officer or Service Manager before**

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requesting that an application be referred to the Planning and Regulatory Committee.

- Members may request that any application is referred to the Planning and Regulatory Committee so long as the application site is within the Ward they represent or the application is in an adjoining Ward and significantly affects the Ward they represent. The request **must be made in writing providing reasons for requesting the referral and be received before** the Director of Development and Environment's authorised representative has countersigned the case officer's written recommendation.
- The Member's request must be made in writing by letter or e-mail **and sent** to the case officer, Service Manager **and team email address** dmadminrequest@n-somerset.gov.uk
- Members may qualify their request so that the application need only be referred to the Planning and Regulatory Committee if the officer's recommendation is contrary to the Member's view.
- If the application involves an enforcement issue, it will be treated no differently from other planning applications.
- Enforcement cases may only be referred to a Committee by the Chairman of the Planning and Regulatory Committee, the Head of Development Management or the Delivery and Enforcement Service Manager.
- All decisions made under delegated powers are circulated monthly to councillors.