



Planning Management Committee 03 July 2019

Proposed Changes to the Constitution

Purpose of report

This report proposes a number of amendments to Part 3.2 (Scheme of Delegation) of the constitution. The proposed amendments relate to development management and are aimed at improving efficiency of decision making. The proposed changes are being reported to the Planning Management Committee for comment, to inform a subsequent report to Council in due course.

Attachment

Appendix 1: Proposed Changes to Part 3.2 (Scheme of Delegation)

1.0 Background

1.1 A full review of the Constitution was undertaken in 2015 by Internal Audit and the Council's legal advisors, LGSS, and a significant number of changes were implemented as a result. A smaller number of changes have been approved since: some via recommendation from the Governance and Audit Committee; some by direct report to Council; and some minor administrative changes via the Monitoring Officer under delegated powers. The most up to date version of the Constitution can always be found on the Council's website.

2.0 Proposed Changes to the Constitution

2.1 Part 3.2 of the constitution (Scheme of Delegation) establishes which decisions are delegated to officers. Over recent months, the number and proportion of planning (and related) applications being considered by the Planning Management Committee has increased, resulting in occasions where items have had to be deferred, or meetings reconvened. The frequency of Committee meetings has also needed to be adjusted, to accommodate the number of applications which will need to be determined in coming months.

2.2 A detailed review of the delegation criteria relating to planning functions has not been carried out for some time. Given the recent increase in the number of applications being reported to the Committee; changes to national planning policy and guidance; changes to national planning performance measures; and changes to the structure and working practices of the Development Management Team, officers consider it appropriate to now review and update the Scheme of Delegation.

2.3 In relation to the delegation of planning decisions, the National Planning Practice Guide advises:

'The exercise of the power to delegate planning functions is generally a matter for individual local planning authorities, having regard to practical considerations including the need for efficient decision-taking and local transparency. It is in the

public interest for the local planning authority to have effective delegation arrangements in place to ensure that decisions on planning applications that raise no significant planning issues are made quickly and that resources are appropriately concentrated on the applications of greatest significance to the local area (Paragraph: 015 Reference ID: 21b-015-20140306).'

- 2.4 The proposed amendments to the Scheme of Delegation are set out in detail in Appendix A. The proposed changes are aimed at:
- Reducing the number of non-controversial applications being reported to the Planning Management Committee, thus improving efficiency of decision making and minimising the use of Council resources;
 - Clarifying certain sections of the Scheme of Delegation which have caused confusion / are open to interpretation.

3.0 Privacy Implications

- 3.1 There are no privacy implications in relation to this report.

4.0 Equality and Diversity Implications

- 4.1 There are no equality and diversity implications arising from this report.

5.0 Legal Implications

- 5.1 There are no known legal implications arising from the changes proposed in this report, other than those noted against each proposed change.

6.0 Risk Management

- 6.1 Clarifying areas of the Scheme of Delegation which have resulted in uncertainty, would help to minimise the risks of legal non-compliance.
- 6.2 As indicated in paragraph 2.1 (above) there has been increases in both the number and proportion of applications being reported to Planning Management Committee in recent months. This has implications for Council resources and speed of decision making. It is more difficult for the Council to meet its statutory determination targets for applications which are reported to Planning Management Committee, due to the limited number of meetings and lead in time for reports. If applications are not determined within statutory timescales, there is a risk the applicant may appeal against non-determination and if performance falls below a certain threshold (60% major applications on time, 70% minor applications on time), the Council will be placed into 'special measures'. The proposed changes to the Scheme of Delegation seek to reduce the number of non-controversial decisions being taken by Committee, thus improving efficiency of decision making and reducing the aforementioned risks.

7.0 Resource and Financial Implications

- 7.1 There are no specific resource or financial implications relating to the proposed amendments to the Scheme of Delegation; however, by reducing the number of non-controversial decision being taken by Committee, this represents a more efficient use of Council resources (in particular officer and Member time).

8.0 Constitutional Implications

8.1 This report seeks members' comments only at this stage. A further report will need to be presented to Council in due course, seeking approval for changes to the constitution.

9.0 Implications for our Customers

9.1 The proposed changes seek to improve efficiency in decision making. This would have a positive impact on our customers by reducing uncertainty and delay in the planning process.



10.0 Corporate Outcomes

10.1 Through improving efficiency in decision making and clarifying parts of the Scheme of Delegation which are unclear, the proposals would support the following corporate objectives:

- Good Value for Money;
- Effective Management;
- High Quality Service Delivery.

11.0 Recommendation

11.1 The Committee is requested to provide any comments they have on the proposed changes to the Scheme of Delegation, so that these can be taken into account before a final report is presented to Council.

Legal	Power: The Town and Country Planning Act 1990 (as amended)			
	Other considerations: National Planning Practice Guide			
Background Papers: Constitution of East Northamptonshire Council				
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Date: 21.06.19				
CFO	DMO 24/06/19		CX 24/06/19	

Proposed Changes to Part 3.2 (Scheme of Delegation)

Part 3.2 Constitution Reference Paragraph	Track Change Version of Changes <i>(red text is proposed insertion whilst deleted text is proposed for removal)</i>		Reason for Proposed Change
1(a) Planning Applications	<p>To determine applications with the exception of those applications falling within categories A to J below:-</p> <p>A. Outline or full applications for residential development involving 10 or more units in Towns or 0.5 hectares or more site area.</p> <p>B. Outline or full applications relating to properties which have been designated as Assets of Community Value.</p> <p>C. Total or partial demolition of Listed Buildings</p> <p>D. Non-residential development involving more than 1,000 square metres of additional floorspace, unless upon land allocated for commercial development in the development plan or other development document.</p> <p>E. District Council applications under Article 3 or 4 of the Town & Country Planning (General Regulations) 1992</p> <p>F. Applications affecting property owned or controlled by an officer or Member of the Council.</p> <p>G. Observations on proposals referred by adjoining Planning Authorities, Government Departments and statutory undertakers in those cases where such proposals are likely to significantly affect this District.</p>	<p>Executive Director with the ability to specify other officers (in addition to those below) within Planning Services to act under the scheme Head of Planning Services (HoPS) Planning Development Manager (PDM) SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION</p> <p>Development Control Committee</p> <p>UNDER SECTION 1(a), PROPOSALS FAILING TO COMPLY WITH DEVELOPMENT PLAN POLICY WILL BE REFERRED TO THE PLANNING MANAGEMENT COMMITTEE</p>	<p>A – I Proposed to be amended and incorporated in a new section 1 (a) (see below)</p> <p>J proposed to be deleted due to legislative changes – There is no longer provision for ‘Renewals’</p> <p>Proposed to delete reference to Development Control Committee. This is not necessary as by default those applications listed will fall to be determined by the Committee</p> <p>Proposed to delete reference to ‘proposals failing to comply with the development plan policy’ – This is ambiguous and does not allow for the ‘planning balance’ to be carried out as required by legislation</p>

	<p>H. Any application at the discretion of the Head of Planning Services</p> <p>I. Any application which a Member requests to be determined by Planning Management Committee within the agreed 21 day time scale.</p> <p>J. Any application for renewal where the Planning Management Committee considered the original application.</p>		
<p>1(b)</p> <p>Applications on which Parish or Town Councils have made representations</p>	<p>Where–</p> <ol style="list-style-type: none"> 1. Representations are made on non-planning grounds, or 2. Objections can be overcome by imposing a planning condition, or 3. Objection has been overcome by an amendment to the proposal, or 4. The decision accords with the representations. 5. Upon direct consultation with the ward members, they agree that a delegated decision should be made. Otherwise determination shall be by:- 	<p>HoPS, PDM; Executive Director with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION</p> <p>Planning Management Committee</p>	<p>Proposed to amend and incorporate in a new section 1 (a) (see below)</p>
<p>1(c)(b)</p> <p>Agreement of materials Conditions for Planning Applications</p> <p>Discharge of planning conditions</p>	<p>To agree materials conditions (for roofs or walls) which differ from those in the applications and which significantly impact on the appearance of the development where the determination was made by Planning Management Committee</p> <p>To determine applications / determine the suitability of details submitted pursuant to planning conditions (including conditions attached to applications for listed building consent and advertisement consent)</p>	<p>Executive Director; HoPs; or PDM in consultation with the Chairman or Vice Chairman of Planning Management Committee and the relevant ward councillor(s)</p> <p>Executive Director; HoPs; PDM, Development Management Officers, Senior Conservation Officer, Enforcement Officers</p>	<p>Proposed to delete due to legislative changes and new text proposed to formalise existing process regarding discharge of conditions generally</p> <p>If a decision on certain condition details is not issued by the LPA within 6 weeks, an applicant can now submit a 'deemed discharge notice'. Furthermore, the National Planning Practice Guide advises</p>

			<p>that: <i>'it is expected that the local planning authority should respond to requests to discharge conditions without delay, and in any event within 21 days.'</i></p> <p>Paragraph 1(c) as currently worded does not support the timely determination of such applications in accordance with current legislation and government guidance. It is also confusing as the Scheme of Delegation is otherwise currently silent regarding planning conditions</p>
<p>1 (a) Planning Applications (including applications for listed building consent and advertisement consent)</p>	<p>To determine applications with the exception of those applications falling within categories A to K below:-</p> <ul style="list-style-type: none"> A. Applications for 'major' residential development (as defined by the Development Management Procedure Order 2015) where minded to approve. B. Applications for change of use or significant or full demolition of Assets of Community Value where minded to approve. C. Total or significant demolition of Listed Buildings, where minded to approve. D. Non-residential development involving more than 2,000 square metres of additional floorspace (unless upon land allocated for such development in the development plan or other development document), if minded to 	<p>HoPS; PDM; Executive Director, with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION</p>	<p>A, B, C, D – Proviso of 'where minded to approve' would improve efficiency of decision making, as non-controversial recommendations would not need to be reported to Committee. Criteria I and J would still allow for a Committee decision where there is local support</p> <p>A – Amended to a more simple definition to avoid confusion</p> <p>B – Amended so that applications not removing / changing the use of the Asset do not need to be reported to Committee</p>

	<p>approve.</p> <p>E. Applications by East Northamptonshire Council (with the exception of non-material amendments and discharge of condition applications).</p> <p>F. Applications affecting property owned or controlled by an officer or Member of the Council.</p> <p>G. Observations on proposals referred by adjoining Planning Authorities, Government Departments, crown bodies and statutory undertakers in those cases where such proposals are likely to significantly affect this District.</p> <p>H. Any application at the discretion of the Head of Planning Services.</p> <p>I. Any application which a Member requests to be determined by Planning Management Committee within the agreed 21 day time scale.</p> <p>J. Applications expressly supported by the Parish/Town Council where officers are minded to refuse, unless upon direct consultation with the ward members, they agree that a delegated decision should be made.</p> <p>K. Applications where the Parish/Town Council object and officers are minded to approve, unless:</p> <ul style="list-style-type: none"> i. objections are made on non-planning grounds, or ii. objections can be overcome by imposing a planning condition, or iii. the objection has been overcome by an amendment to the proposal, or 		<p>C – Clarified this relates to significant demolition. Current wording unclear whether it includes small scale works such as removal of partition walls / creation of window and door openings etc.</p> <p>D – Threshold increased to avoid relatively small scale proposals being reported to Committee. Permitted Development Regulations now permit agricultural buildings of up to 1000sqm without planning permission, therefore the proposed threshold (2000sqm) is considered more proportionate than the current threshold (1000sqm) in relation to current legislation</p> <p>E – Amended for clarity, to accord with part 5.4, paragraph 6.1.2 of the constitution</p> <p>F, H and I – These remain the same as currently drafted</p> <p>G – reference to crown bodies added (see below regarding paragraph 3 of the Scheme of Delegation)</p> <p>J and K – To replace section 1(b)</p>
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	iv. upon direct consultation with the ward members, they agree that a delegated decision should be made.		
2 Environmental Impact Assessment	Under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017 1999 as amended, to form a view as to whether an Environmental Statement is considered necessary in connection with a particular development proposal and to respond to scoping requests.	HoPS, PDM; Executive Director, with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION	Updated to refer to current legislation and to clarify that scoping requests are included
3 Adjoining Authority Consultations	To make formal observations on applications relating to proposals submitted by other local authorities, Crown bodies or Government Departments, where it is considered that the proposals are unlikely to significantly affect this District.	HoPS, PDM; Executive Director, with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION	It is suggested that this can be deleted as it falls under paragraph 1(a) of the Scheme of Delegation (criterion G relates) Subsequent paragraphs would require renumbering
4 (a) Minor Non-Material Amendments	Notification to applicants that minor amendments and alterations for planning purposes may be construed as complying with the plans previously approved. Determination of applications for non-material amendments	HoPS, PDM; Executive Director, with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION	Corrected to refer to 'non-material amendments' rather than 'minor non-material amendments' to accord with the relevant legislation Amended to clarify the provision relates to determination rather than solely approval

<p>4 (b) Minor Material Amendments</p>	<p>Notification to applicants that minor amendments and alterations for planning purposes may be construed as complying with the plans previously approved, unless the original application was considered by the Development Control Committee.</p>	<p>HoPS, PDM; Executive Director; Principal Development Officers; Senior Development Officers; Development Officers and Senior Conservation Officer with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION</p>	<p>Proposed to be deleted</p> <p>These applications are section 73 (Town and Country Planning Act) applications, i.e. formal planning applications for variation of condition. Such applications are already captured by section 1(a) of the Scheme of Delegation where there is provision for Member call in</p>
<p>5 Enforcement</p>	<p>Institution of proceedings for failure to comply with an enforcement notice.</p> <p>Institution of legal proceedings and/or direct action in relation to The Town and Country Planning Act, 1990: Section 171D – Planning Contravention Notice; Section 171G – Temporary Stop Notice; Section 179 – Enforcement Notice; Section 187 – Stop Notice; Section 187A – Breach of Condition Notice; Section 189 – Discontinuance Notice; Section 210 – TPO Violation; Section 211 – Trees in Conservation Area; Section 216 – Section 215 Notice; Section 224 – Advertisements; Section 225 – Placards or Posters.</p>	<p>Executive Director, HoPS, PDM in conjunction with LGSS Legal Service the Council's legal advisor (where required) with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION. Notice of intention to take action to be given to Ward Members</p>	<p>To enable effective and timely planning enforcement</p>

5(a) Enforcement	Issue of Cautions for minor offences	Chief Executive, Executive Director, HoPS, PDM and Senior Principal Planning Enforcement Officer with the ability to specify other officers (in addition to those shown) to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION	To reflect changes in staff structure
6 Enforcement	Institution of legal proceedings under the Town and Country Planning (Control of Advertisement) Regulations relating to fly posting.	Executive Director, HoPS, PDM; in conjunction with LGSS Legal Service the Council's legal advisor (as required) ; with the ability to specify other officers (in addition to those shown) to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION. Notice of intention to take action to be given to Ward Members	Minor clarification
General Operational Arrangements relating to Planning applications	<p>1. No application* is determined before the expiration of the <i>21 day</i> period allowed for public comment.</p> <p>2. Delegated decisions are made on a daily basis.</p> <p>3. Applications in the delegated categories are identified in notifications to Councillors.</p> <p>4. All applications received are included on a weekly list circulated to all Members and Parish/Town Councils. The list is also available to view on the Council's web site at www.east-northamptonshire.gov.uk.</p> <p>5. Members wishing to refer an application to Planning Management Committee for determination must do so before the "earliest decision" date identified against each application on the Weekly List by notifying expiration of 21 days from the date of</p>	<p>Clarification for point 1 added for the avoidance of doubt</p> <p>Amendments to point 5 to ensure consistency with paragraph 1 (a) (planning applications) of the Scheme of Delegation (above) and Part 5.4 paragraph 5.2.1 of the constitution</p>	

	<p>publication of the relevant weekly list, by notifying – in writing – the appropriate Development Control Management Officer and stating the reason for the call in.</p> <p>* For the avoidance of doubt, the following application types are excluded as they do not require public consultation:</p> <ul style="list-style-type: none">• Applications for lawful development certificates• Applications for discharge of condition• Applications for non-material amendments• Consultations from other authorities/bodies etc.• Certain applications for prior notification/approval (as specified in legislation)• Requests for screening opinions	
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