

Agenda Item No:	11	
Committee:	Council	
Date:	6 August 2020	
Report Title:	<b>Constitutional Amendments: Planning Scheme of delegation</b>	

## 1 Purpose / Summary

The purpose of this report is to consider revisions to the Planning scheme of delegation within the Council's Constitution in regards to officer delegated decisions to refuse planning permission. As a result of this addition and in order to ensure consistency in the process in all instances where an application is called in to the Planning Committee minor changes are also being proposed to the existing provisions. Two additional delegations to officers in relation to enforcement and the power to decline to determine applications are also proposed.

## 2 Key issues

The Council's Constitution includes within it a scheme of delegation. This identifies what duties / tasks can be carried out by officers instead of Planning Committee and sets out any conditions associated with these authorisations.

Members have requested that all planning applications that are due to be refused planning permission by officers under delegated powers are subject to a consultation process with the Chairman of Planning Committee (or substitute). This may mean some planning applications will then be referred to Planning Committee for determination. Members have also requested that telecommunications prior notification applications that are minded to be recommended for refusal by officers be subject to a consultation process with the Chairman of Planning Committee and potentially be forwarded to Planning Committee for determination. The introduction of these provisions requires a change to the Council's scheme of delegation.

To ensure the overall consistency of the process and compliance with good overall governance future decisions regarding the call-in process to Planning Committee will be taken by the Head of Planning in consultation with the Chairman of Planning Committee.

## 3 Recommendations

Revise the Planning scheme of delegation within the Council's Constitution as set out at Appendix A to:

- a) Introduce a process for planning applications recommended for refusal under officer delegated powers to be subject to a consultation process with the Planning Committee Chairman (or substitute) and potentially referred to Planning Committee for determination
- b) Introduce a process for telecommunication prior approval applications that **officers are minded to refuse to be subject to a consultation process with the Planning Committee Chairman (or substitute) and potentially referred to Planning Committee for determination**

c) To ensure consistency and compliance with good governance requirements, that the existing call in provisions are updated to reflect that the Chairman of Planning Committee (or substitute) will be consulted on ward Member call in applications.

d) To introduce two new officer delegations in relation to enforcement and the power to decline to determine applications under Section 70 of the Town and Country Planning Act

d) Delegate to the Monitoring Officer to update the Constitution to bring these changes in to effect as set out at Appendix 1.

<b>Wards Affected</b>	All
<b>Forward Plan Reference</b>	N/A
<b>Portfolio Holder(s)</b>	Dee Laws Portfolio Holder for Planning
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<b>Background Paper(s)</b>	Constitution

## **4 Background / introduction**

All Councils, in their Constitutions, identify which functions of the authority are carried out by the different parts of the authority. As an integral part of this, certain functions are delegated to officers and this can sometimes be subject to certain terms and conditions that are set out in the constitution. The term most often used for this is 'scheme of delegation'. One of the reasons for having a scheme of delegation is to ensure efficient and effective decision making.

Most planning applications are determined by officers. As at December 2019, (nationally) on average 95% of decisions on applications are made by officers (<https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics#district-matter-tables>). Compared to this the delegation rate at Fenland District Council is 93%. So, we already have a marginally lower rate of delegation when compared to the national picture.

Both the Portfolio Holder for Planning and the Planning Committee Chairman have requested that the existing scheme of delegation be reviewed so that consideration could be given to the introduction of a consultation process with the Chairman on planning applications recommended for refusal under delegated powers. The outcome of the consultation would either be that the decision can be issued as per the officer's recommendation or that the application will be presented to the Planning Committee for determination. This is a unique proposal, to our best understanding, nationally.

Officers have been asked to consider how telecommunication applications that come forward under the prior notification regime might be dealt with differently to the current arrangement in which all such applications are determined by officers.

This report, as well as covering the above requests, also identifies several other revisions to the scheme of delegation that are required in order to ensure a consistency between the existing and newly proposed arrangements.

Furthermore, there are two further areas of delegation to officers to be considered in relation to enforcement and repeat applications.

1) Power to decline to determine overlapping applications, repeat applications and applications that are the subject in whole or part to enforcement action under section 70 of the Act. This power in the legislation is used to prevent applications being submitted in order to thwart enforcement action and unreasonable submission of repeat and duplicate (twin tracking) applications.

2) Prosecution following non-compliance with enforcement notices of any type. Officers are requesting that delegated powers be granted to them to progress to prosecution stage if a notice has not been complied with.

## **5 Considerations**

### **5.1 Determination of Planning Applications & Planning Policy & Guidance**

Planning law dictates that planning applications should be determined in accordance with planning policy (national as well as local) unless material considerations are sufficiently strong to outweigh policy in relation to the application being considered. This requirement is purposely in place so that there can be consistent decision making. This gives developers and the public confidence in the decision-making process.

Local Plans must be prepared by Councils and must be kept up to date (these two things being a legal requirement) and represent a considerable financial investment by the Council. The Local Plan sets out the growth ambition of the Council and the associated policies to be used in

order to decide planning applications in a way that will deliver growth in the desired way. It follows, that in accordance with adopted policies (national or local) some forms of development will not be acceptable.

## **5.2 Consultation with Chairman of Planning Committee on delegated decisions recommended for refusal**

Where a planning application is recommended for refusal under delegated powers, it is proposed that the Chairman (or substitute) will be consulted. The outcome of the consultation will be either:

1. The application is determined under delegated powers in accordance with the officer recommendation OR
2. The application is presented to Planning Committee for determination.

The decision on the outcome of the consultation will rest with officers. It cannot rest with the Chairman (or substitute) alone as this would be contrary to the provisions of s.101 of the Local Government Act 1972. Planning Committee may only delegate its functions to a sub-committee or an officer. There is no provision for planning functions of this nature to be delegated to a single member and there is case law which confirms that a single Member cannot constitute a 'committee' or sub-committee' for that purpose.

## **5.3 Who would be responsible for the consultation process if it were introduced?**

Officers would undertake the consultation with the Chairman of Planning Committee and be the decision maker regarding the outcome of the consultation.

Arrangements would be made for a substitute for when the Chairman is not available. It will be for the Chairman to advise officers as to the times when the duty has been passed to the substitute.

The Chairman/substitute need to make known their views on whether they feel an application should be considered by Planning Committee in writing. It is suggested that a 48-hour period is given and that if there is no response then it will be taken that there is no objection to a delegated refusal on the decision.

If the Chairman or substitute is unable to make the filtering decision due to a conflict of interest, then the officer recommendation on the application will be the decision on the application.

It should be noted that in participating in this process, the Chairman/substitute will not be required to form a view as to how the application should be decided and in each instance where an application has been referred to the Planning Committee they will declare their participation in the consultation process but must remain entirely open minded. In any instance where this is not the case then the ordinary requirements about interests will apply and will prohibit their further participation in the process.

## **5.4 Telecommunication Prior Notification Applications**

Prior notification applications are different from normal planning applications in that:

They have to be determined within 56 days as otherwise they automatically get 'permission'

The only matters that can be considered in their determination are siting and appearance

As the applications are subject to a 21-day public consultation, a special planning committee meeting may be required if the Head of Planning refers the matter to Committee through the consultation process with the Chairman. It is therefore proposed that when an officer is minded to recommend refusal, the Chairman of Planning Committee will be consulted.

## **5.5 Implications**

This second check on applications due for refusal enables officers and the Chairman of Planning Committee to ensure the weighting of planning reasons are correctly formed, ensuring the Council does not miss out on any growth opportunities.

The introduction of a process also has the potential to:

- a) increase costs if more applications are presented to Committee
- b) impact quality of schemes
- c) slow down decision making
  - i) A period will elapse during which the process takes place. This is estimated to be 3-4 days (there would be 2-3 applications per week going through the process).
  - ii) Any application would, if it is to be referred to Planning Committee via the process, be put on the next Planning Committee agenda. In such circumstances the period of delay could be up to 7 weeks (note that the statutory timescale for the determination of applications is 13 weeks for major applications and 8 weeks for minor and other applications.)
- d) increase lobbying of Members.

## **5.6 Revision to the existing scheme of delegation**

Under the existing scheme of delegation, for 'other' and 'minor' applications which have either an FDC or Member involvement the Chairman of Planning is party to a joint decision (with officers) on whether or not the application is presented to Planning Committee as opposed to being subject to a delegated decision. This needs to be revised in order to make the process consistent with the proposed process in relation to officer delegated refusals i.e. so that the Head of Planning will consult with the Chairman on the matter and that the Head of Planning will be the decision maker on whether or not the application is determined under delegated powers or presented to the Planning Committee for determination. This change would be in keeping with the provisions of s101 of the Local Government Act 1972.

The above process will also apply to the ward Member call in process.

## **5.7 Effect on corporate objectives**

The grant of planning permissions through the Planning Committee and delegated decision-making process supports the following stated objectives:

- a) Attract new businesses, jobs and opportunities whilst supporting our existing businesses in Fenland
- b) Promote and enable housing growth, economic growth and regeneration across Fenland

## **5.8 Community impact**

Planning applications must be decided in accordance with planning policy unless material planning considerations outweigh the policy position. This ensures that fair and consistent decision-making takes place which is the backbone of the planning system and gives the public faith in its operation.

## **5.9 Conclusions**

The proposed amendments to the existing scheme introduce the requirement for the Head of Planning to review all applications in consultation with the Chairman of Planning Committee or substitute in circumstances where the planning officer is recommending refusal. Where the matter is requested to be referred for consideration to the Planning

Committee, this will be endorsed if it meets the relevant criteria, and where it is considered that the planning reasons require more detailed consideration.

## APPENDIX A

### 88. Development Control

1. Having ensured that all statutory requirements and Council policies have been complied with and after considering all representations received; 23(i)

(i) Determine all 'other' and 'minor' applications submitted under any of the Acts or Statutory Instruments set out in Appendix A to this Scheme unless:-

- Called-in by Member (the development must be within their ward area or adjacent ward area and the Member request has been granted by the **Head of Planning in consultation with the Chairman of Planning or substitute**).
- 6 or more unresolved written opinions from 6 or more separate sources are received from within the ward area or adjacent ward area which differ from the officer recommendation.
- Town/Parish views are in conflict with officer recommendation and the application is for more than 2 dwellings.
- **The Head of Planning considers that the application merits committee consideration on the grounds of wider planning interests.**

For

- 'other' and 'minor' applications which have either FDC or Member involvement OR
- 'other' and 'minor' applications where the officer recommendation is for refusal

the following procedure will apply;

The Head of Planning will consult the Chairman of Planning Committee and decide if:

The application should be determined by the Planning Committee OR the application should be determined under delegated powers by the Head of Planning.

If in the opinion of the Head of Planning in consultation with the Chairman of Planning Committee the recommendation is accepted, the case officer's decision will be countersigned by the Head of Planning.

If in the opinion of the Head of Planning in consultation with the Chairman of Planning Committee there are wider planning issues to consider the matter will be placed on the Planning Committee agenda.

- (ii) Determine all 'major' applications submitted under any of the Acts or Statutory Instruments set out in Appendix A to this Scheme unless:-
- FDC or Member involvement
  - Called-in by a Member (the development must be within their ward area or adjacent ward area and the Member request has been granted by the Head of Planning in consultation with the Chairman of Planning).
  - 6 or more written views from 6 or more separate sources are received which conflict with the officer recommendation
  - Town/Parish views are in conflict with officer recommendation
  - Statutory Consultee views are in conflict with officer recommendation
  - The Head of Planning considers that the application merits committee consideration on the grounds of wider planning interests.

- The application is recommended for refusal in which case the following procedure will apply;

The Head of Planning will consult the Chairman of Planning Committee and decide if:

The application should be determined by the Planning Committee OR the application should be determined under delegated powers by the Head of Planning.

If in the opinion of the Head of Planning in consultation with the Chairman of Planning Committee the recommendation is accepted, the case officer's decision will be countersigned by the Head of Planning.

If in the opinion of the Head of Planning in consultation with the Chairman of Planning Committee there are wider planning issues to consider the matter will be placed on the Planning Committee agenda.

- (iii) determine all applications pursuant to conditions attached to permissions,
- (iv) determine all requests for minor amendments to permissions,
- (v) determine all applications for certificates of lawfulness,
- (vi) respond to all consultations from Cambridgeshire County Council regarding applications submitted to them as the relevant Planning Authority,



- (vii) determine all applications for works to trees and those submitted under the Hedgerow Regulations 1997,
- (viii) determine all prior notification applications and all subsequent detailed submissions applications, **but in the case of telecommunication applications where the officer is minded to recommend refusal the Head of Planning will consult the Chairman of Planning Committee and decide if:  
The application should be determined by the Planning Committee OR the application should be determined under delegated powers by the Head of Planning.**
- (ix) determine all requests for screening or scoping opinions under the relevant legislation,
- (x) determine all applications for Ancient Monument Consent,
- (xi) determine all applications for Hazardous Substances Consent,
- (xii) determine all queries relating to 'permitted development' i.e. is permission/approval/consent/notification required,
- (xiii) make and confirm Tree Preservation Orders unless any relevant objections are received.
- (xiv) Respond to applications for Goods Operators' Licences as appropriate,
- (xv) Respond to consultation regarding the erection or modification of overhead power lines and ancillary equipment,
- (xvi) Determine applications for Certificates of Appropriate Alternative Development,
- (xvii) To enter into legal agreements under Section 106 of the Town & Country Planning Act 1990.
- (xviii) to decline to determine applications under Section 70 A, B & C of the Town & Country Planning Act 1990.**

Definitions for section:-

- Major applications (Department for Communities and Local Government codes 1-5),
- 10 or more dwellings or site area of more than 0.5ha,
  - All other land uses – involving floor space of more than 1,000 sq m or a site area of more than 1ha,

Minor applications (Department for Communities and Local Government codes 6-10),

- 1-9 dwellings
- All other land uses involving floor space of less than 1,000sqm or sites of less than 1ha,

Other applications (Department for Communities and Local Government codes 11-17)

- Changes of use (except where fall into major category)
- Householder developments (within the curtilage of a residential property except for changes of use and creation of additional dwellings),
- Advertisements,
- Listed Building consent to alter/extend
- Listed Building consent to demolish
- Conservation Area consents

FDC/Member involvement:-

- Landowner,
- Applicant
- Agent
- Staff member working in Development Service or in a closely associated Service

OVERALL PROVISOS TO SECTION 889 any Fenland District Council member can require any delegated application in Category (i) and (ii) above to be referred to the Planning Committee for consideration by notification in writing to the Head of Development at [planning@fenland.gov.uk](mailto:planning@fenland.gov.uk) within three weeks of registration date (such notification must provide planning reasons for requesting reference to Committee and these planning reasons must subsequently be incorporated in the report to Committee). The scrutiny of the weekly list of applications circulated to members will facilitate this safeguard.

Head of Planning consultation with the Chairman on officer delegated refusals and call in process:

- There is a 48-hour period (equivalent to 2 working days) allowed for a consultation response to be received.
- A nil or late response will automatically mean that a delegated decision will be made on the application.
- Where there is a conflict of interest for the Chairman or substitute, a delegated decision on the application will be made.
- The consultation reply must be in writing and give a planning justification for any request for Planning Committee consideration.
- The Chairman must advise the Head of Planning and Development Manager of times when the substitute is acting.

89. Planning Enforcement:

To:

issue Planning Contravention Notices;  
issue Requisitions for Information;  
authorise and issue Breach of Condition Notice proceedings;  
authorise and issue Waste Land Notices;  
authorise and initiate Proceedings against Fly Posters;  
authorise and initiate Proceedings against Unauthorised Signs.  
issue Temporary Stop Notices  
issue Enforcement Notices  
in cases of urgency in consultation with the Chairman of the Planning Committee (unless such consultation would have a detrimental effect on this power) to:

- a. issue a Stop Notice
- b. authorise an application for an injunction
- c. authorise the commencement of any legal proceedings such actions to be notified to the next scheduled meeting of the Planning Committee
- (xi) issue notices requiring the Proper Maintenance of Land
- d. authorise prosecution following non-compliance with an enforcement notice of any type