

## **Planning Committee**

**13 March 2024**

### **Constitutional Issues**

Report from: Adam Bryan, Director of Place

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#### **Summary**

This report seeks the Committee support to update the scheme of delegation in relation to the referral of planning applications to the Planning Committee. The report also sets out some proposals in relation to the role of ward Councilors addressing the Committee.

#### **1. Recommendations**

- 1.1. The Committee is asked to recommend the changes to the Employee Delegation Scheme, as set out in Appendix 1 to the report, to Full Council for approval.
- 1.2. The Committee is asked to recommend the changes to the Planning Code of Good Practice, as set out in Appendix 2 to the report, to Full Council for approval.

#### **2. Budget and policy framework**

- 2.1. The Monitoring Officer has an obligation to monitor and keep the Constitution under review.
- 2.2. Under Section 101 of the Local Government Act 1972, the Council has delegated authority to this Committee to determine all planning applications as set out in the Committee's terms of reference. The Committee may, in turn, arrange for any of its functions to be discharged by a Sub Committee or officer.
- 2.3. Both the Employee Scheme of Delegation and the Planning Code of Good Practice form part of the Council's Constitution, therefore, changes to these documents will require Full Council approval.

### 3. Background

- 3.1. The Employee Scheme of Delegation forms part of the Constitution and specifies those functions for which officers have delegated authority. In the case of planning applications, these were last reviewed during the covid pandemic. In April 2020, the Planning Committee agreed to temporarily amend the scheme which had the effect of reducing the number of planning applications which needed to be considered and determined by the Planning Committee, with those decisions made by the Planning officers instead. In practice this meant a draft Committee agenda was prepared in line with previous scheme of delegation and the Chairperson and Planning Spokespersons went through that with the Chief Planning Officer and agreed which applications needed to stay on the Committee agenda and which could be determined by officers. This meant that the Committee focused on only the most significant or controversial applications during the COVID-19 pandemic. In May 2021, the Committee considered a further report on whether to make these changes on a permanent basis, however, no decision was made to do so at that stage.
- 3.2. It is considered timely to present to the Committee a further opportunity to review proposed changes to the Employee Scheme of Delegation, the effect of which would allow the Committee to focus on significant and controversial applications thereby allowing applications that are straight forward or technical in nature to be considered and determined by officers under delegated authority, these are summarised below and specified as tracked changes at Appendix A to the report.
- 3.3. With significant changes to legislation over the last 14 years, particularly with respect to permitted development rights and prior approvals, many of which are time limited in terms of decision making and which are technical matters in decision making rather than planning balance, it seems appropriate to remove these from Committee consideration along with other similar technical matters.
- 3.4. In relation to planning applications, following discussion with the previous Chairperson, Vice Chairperson and Opposition Spokesperson, it is recommended to increase the number of letters from separate households that would trigger referral from 3 to 5, and to retain the existing delegation which enables the Chief Planning Officer, having consulted the Chairperson, Vice Chairperson and Opposition Spokesperson to agree "other" applications (e.g. householder applications, change of use (no operational development) etc) be determined under delegated powers regardless of the number of representations reflecting their limited impact.
- 3.5. A letter from the Parish Council or a residents group expressing a view contrary to the officer recommendation will remain as requiring Committee determination, on the basis that the Parish Council and residents' groups represent more than 5 residents, but with the addition that a Parish Council can object but also agree the application remain to be determined under delegated powers due to its limited impact.

- 3.6. Amendments to the scheme are recommended in relation to tree related applications, which reflect the above and provide more clarity on what proposals can be determined under delegated powers.
- 3.7. With regards to the current rules regarding the role of ward councillors addressing the Committee, the current rules date back to a period where there was only one ward represented by a single Councillor. Under the new boundary arrangements adopted for the May 2023 local elections, there are now three wards which are represented by a single Councillor.
- 3.8. Members will be aware that the current rules stipulate that Ward Councillors can only speak on an individual planning application/enforcement matter once unless it is a new application or unless the application has changed.
- 3.9. A small number of planning applications come twice to Committee, usually following the agreement of the Committee to defer the application. This type of deferral can happen after a Ward Member has addressed the Committee. In the case of single Councillor wards, the Committee has previously informally agreed to the Councillor to speak again (i.e. twice). It is now proposed that this is formalised in the Planning Code of Good Practice to remove the need for informal agreements.
- 3.10. Separately, the Planning Code of Good Practice states that "...if the application is deferred, the Ward Councillor will not be permitted to address the Committee again on the same application when the application is re-submitted for consideration unless it is a new application or unless the application has changed". It is considered that this is too wide in scope as an application may only be subject to very minor changes, e.g. In a recent application on the peninsula a Ward Councillor had spoken on an application, which then returned to committee with a reduced number of units and therefore did not raise any new issues for the ward Councillor to speak on. Under the current rules this would allow a Ward Councillor to speak again.
- 3.11. Therefore, it is proposed that the rule is changed so that that a Member can speak for a further time if the legal advisor to the Committee is of the opinion that the application has varied to the point that it should be considered as a new application or that it should be considered that the application has significantly changed. This is specified as a tracked change at Appendix B to the report.

#### 4. Options

- 4.1. Option 1 – to make no changes to the Employee Scheme of Delegation and the Planning Code of Good Practice.
- 4.2. Option 2 – to recommend changes to the Employee Scheme of Delegation and the Planning Code of Good Practice to Full Council approval. This is the recommended option.

## 5. Advice and analysis

- 5.1. Option 2 is the recommended option because it is important to review and update the individual sections of the Constitution on a regular basis to ensure that it reflects the Council's current arrangements, e.g. three single Councillor wards as well making the best use of Committee time, e.g. spending more time considering and determining significant or controversial applications and leaving those more straightforward applications to officers to deal with. Applications that are reported to Committee cost significantly more to process in terms of officer time, while it is important to make the most of Committee time to focus on applications that require their attention rather than considering very lengthy agendas with items that will have limited impact.
- 5.2. The Committee is also advised that the Councillor Conduct Committee considered a report on 21 February 2024 setting out details of the Monitoring Officer's forthcoming review of the ethical framework, which will include a review of the Planning Code of Good Practice. The Monitoring Officer is aware of this specific issue (single Councillor wards) already being considered by the Planning Committee.

## 6. Risk management

- 6.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Constitution is fit for purpose	It is important to ensure that the Constitution is fit for purpose, in the case of the Planning Committee, this will ensure that it operates effectively and efficiently.	Ensure that the individual sections of the Constitution is reviewed on a regular basis.	DIII

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

## 7. Consultation

7.1. Consultation on the proposals in this report have been undertaken with Planning Committee members.

## 8. Climate change implications

8.1. [The Council declared a climate change emergency in April 2019](#) - item 1038D refers, and has set a target for Medway to become carbon neutral by 2050.

8.2. There are no direct climate change implications arising from this report.

## 9. Financial implications

9.1. There are no direct financial implications arising from this report.

## 10. Legal implications

10.1. The determination of planning applications is a non-executive function of the Council. Section 101 of the Local Government Act 1972 provides for the Council to arrange for the determination of planning applications by a Committee, a Sub Committee or an officer and for a Committee to delegate its functions to a Sub Committee or an officer.

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### Appendices

Appendix A – Employee Delegation Scheme (extract)

Appendix B – Planning Code of Good Practice (extract)

### Background papers

None