

PLANNING COMMITTEE

13 FEBRUARY 2019

PLANNING COMMITTEE – CONSTITUTIONAL ISSUES

Report from: Richard Hicks, Director Regeneration, Culture, Environment and Transformation and Deputy Chief Executive

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Summary

This report asks the Committee to consider a change to the provisions in the employee scheme of delegation relating to the triggers for escalation of planning applications from officer to Committee level. Any decisions or recommendations of the Committee which have the effect of changing the Constitution will need to be referred to full Council for approval (unless they are minor, in which case the Monitoring Officer has a delegation to make the changes).

The report also asks the Committee to formalise the existing process whereby Ward Councillors address the Committee at meetings of the Planning Committee on planning applications/enforcement matters.

1. Budget and Policy Framework

- 1.1 The Monitoring Officer has an obligation to monitor and keep the operation of the Constitution under review.
- 1.2 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.
- 1.3 Paragraph 14.3 (Changes to the Constitution) of Article 14 of the Constitution states that changes to the Constitution are a matter for Council (except for minor changes where the Monitoring Officer has delegated authority with a copy of such changes being supplied to all Group Leaders and Whips within 14 days).

2. Background

a) Revision to the scheme of delegation

- 2.1 The scope of officer delegations in relation to the determination of planning applications is set out in paragraph 8.1 of Section 8 of the Officer Scheme of Delegations in the Council's Constitution as attached at Appendix A.
- 2.2 The Director Regeneration, Culture, Environment and Transformation and Deputy Chief Executive has authority to determine applications unless the circumstances in sub paragraphs (i) to (vii) in paragraph 8.1 of section 8 of the officer scheme of delegations apply. The majority of applications (90%) are dealt with by officers under these arrangements. The triggers for escalation of a planning application for determination by this Committee currently include a request from a Parish Council within 21 days of publication of the weekly list of planning applications as long as material planning considerations are cited. Also, receipt of three or more relevant letters of representation (which may include letters from an Amenity Society but must also include at least two from separate households in the vicinity of the site) contrary to the proposed officer decision or where one letter of representation is received from a Parish Council or a Residents' Association/Society contrary to the proposed officer decision (except, in the case of a representation by a Parish Council or a Residents' Association/Society, where the Director of Regeneration, Culture, Environment and Transformation and Deputy Chief Executive, in consultation with the Chairman and Spokespersons(s) of the Planning Committee, is of the opinion that the representation contains no reasonable planning grounds supporting the representation) (in which case the application will be dealt with at officer level).
- 2.3 Following discussion with the Chairman of this Committee and the designated Opposition Spokesperson(s) it is proposed to make a change to the circumstances in which planning applications may be escalated from officer level with a view to preserving a focus by the Committee on significant or controversial applications.
- 2.4 It is proposed that in the future 'other' planning applications will no longer be referred to the Planning Committee for determination if, following consultation by the Director Regeneration, Culture, Environment and Transformation and Deputy Chief Executive with the Chairman, Vice Chairman and designated Opposition Spokesperson(s) it is considered inappropriate to refer such 'other' applications to the Planning Committee for determination. For the avoidance of doubt, it will be necessary for the decision not to refer the 'other' planning application to the Planning Committee to be unanimous in each case considered and, in the event of there not being a consensus, the application will be referred to the Committee for determination.
- 2.4 'Other' applications consist of:
- Householder applications
 - Change of use (no operational development)
 - Adverts
 - Listed Building extensions/alterations
 - Listed building demolition

- Application for relevant demolition of an unlisted building within a Conservation Area
- Certificates of Lawfulness (191 and 192)

- 2.5 In view of the legal requirement for Parish Councils, as the third tier of local government in the area, to be consulted on planning applications by Medway Council, it is proposed to preserve the opportunity for a Parish Council to trigger an escalation to Committee level as long as the representation identifies material planning grounds; otherwise the Director Regeneration, Culture, Environment and Transformation and Deputy Chief Executive will deal with the application under delegated authority.
- 2.6 It is also proposed to continue the facility for representations from Residents' Associations/Societies contrary to the proposed officer decision to trigger an escalation to the Planning Committee as long as they clearly identify material planning grounds.
- 2.7 The provision for the Director Regeneration, Culture, Environment and Transformation and Deputy Chief Executive in consultation with the Chairman of the Committee, Vice Chairman and designated Opposition Spokesperson(s), to decide to deal with an application at officer level where a Parish Council representation or representations from a Residents' Association/Society offer no reasonable planning grounds would be retained. For example, where a representation has no planning justification such as requesting car parking provision in excess of adopted standards.

b) Formalisation of the role of the Ward Councillor when addressing the Planning Committee

- 2.8 Established practice is for Ward Councillors to be able to address the Planning Committee on planning applications/enforcement matters in their Ward.
- 2.9 This arrangement has worked well and it is recommended that the Committee should formally agree the process.
- 2.10 The Committee is therefore recommended to formally adopt the following procedure which reflects established practice and to update the Planning Code of Good Practice:
- i) Ward Councillors register their wish to speak at the Planning Committee with the Chairman, Head of Planning or Democratic Services Officer no later than 5.15pm on the day of the Planning Committee.
 - ii) Each Ward Councillor will be permitted to speak on an individual planning application/enforcement matter for up to 5 minutes. Where there is more than one Ward Councillor wishing to address the Committee then they will be permitted up to 5 minutes each.
 - iii) A Ward Councillor shall only be permitted to address the Committee once on an individual planning application. Therefore, 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**. This will not remove the right for a

Ward Councillor to speak at Planning site visits. This provision will not prevent a Ward Councillor from addressing the Committee on a planning application for the same site in the event that a fresh planning application is submitted at a future date.

- iv) In the event of a planning application/enforcement matter being located on the Ward boundary and it is accepted that the impact of the proposal will affect an adjoining Ward, then Ward Councillors from the adjoining Ward will have the same rights to address the Planning Committee as those in whose Ward the planning application/enforcement matter is located.

3. Options

- 3.1 The option open to Members in relation to the escalation of planning applications is either to make no change to officer delegations or to make the revisions shown as tracked changes in Appendix A.
- 3.2 The procedure for Ward Councillors to address the Planning Committee on planning applications is already in operation. This report seeks to formalise such arrangements for the avoidance of doubt.

4. Advice and analysis

- 4.1 The Planning Committee is recommended to approve the changes to the scheme of employee delegations as set out in Appendix A and formalise the procedure for Ward Councillors addressing the Planning Committee as set out in Appendix B and to recommend that the consequential changes be approved by the Monitoring Officer as a minor change under his delegations.

5. Risk Management

- 5.1 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
Loss of focus on significant or controversial planning applications by the Planning Committee	Members have expressed the view that a number of 'other' planning applications should more appropriately be dealt with at officer level to preserve the focus of the Committee on significant or controversial applications	The Committee is invited to consider changes to the officer scheme of delegations as set out in Appendix A to address these concerns.

Risk	Description	Action to avoid or mitigate risk
Continuation of informal process for permitting Ward Councillors to speak on planning applications	This report seeks to formalise the procedure for Ward Councillors addressing the Committee on planning applications for the avoidance of doubt moving forward	The Committee is invited to consider the formalisation of the procedure for permitting Ward Councillors to address the Planning Committee as set out in Appendix B

6. Consultation

- 6.1 Consultation on the proposals in this report has been undertaken with the Chairman, Vice Chairman and designated Opposition Spokesperson(s) of the Planning Committee, all of whom support the principle of the recommendations.

7. Financial implications

- 7.1 None

8. Legal implications

- 8.1 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.

9. Recommendations

- 9.1 The Committee is recommended to approve a change to the scheme of employee delegations relating to the determination of planning applications, as set out in paragraph 2a and shown as tracked changes in Appendix A to this report and to agree that the consequential changes to the Constitution should be approved by the Monitoring Officer as minor changes under his delegations.
- 9.2 The Committee is recommended to approve the formalisation of the procedure for Ward Councillors speaking on planning applications/enforcement issues as set out in paragraph 2b and shown as tracked changes in Appendix B and to agree that the consequential changes to the Constitution should be approved by the Monitoring Officer as minor changes under his delegations.

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Appendices:

Appendix A – Extract from Employee Scheme of Delegations

Appendix B – Medway Council Planning Code of Good Practice

Background papers:

Medway Council Constitution