

PLANNING COMMITTEE

26 MAY 2021

PLANNING COMMITTEE – CONSTITUTIONAL ISSUES

Report from: Richard Hicks Director of Place and Deputy Chief Executive

Authors: Dave Harris – Head of Planning
Vicky Nutley – Assistant Head of Legal Services
Wayne Hemingway – Head of Democratic Services

Summary

This report seeks the Committee's support for extending the current temporary scheme of delegation concerning the referral of planning applications to the Planning Committee onto a permanent basis.

This follows the Committee's decision on 1 April 2020 to agree to change the provisions in the employee scheme of delegation relating to the triggers for escalation of planning applications from officer to Committee level for a temporary period with effect from 2 April 2020 until such time as the Government's guidance on social distancing in response to the Covid-19 pandemic was lifted.

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

2.1. On 1 April 2020, the Planning Committee considered and agreed a temporary change to the circumstances in which planning applications may be escalated for determination by the Planning Committee from officer level with a view to preserving a focus by the Committee on only the most significant or controversial applications during the COVID-19 pandemic. The Committee agreed the following:

2.1.1. The Committee approved a change, for a temporary period with effect from 2 April 2020 until such time as the Government's guidance on social distancing is lifted, to the scheme of employee delegations relating to the determination of planning applications, as set out paragraph 2.5 of the (April 2020) report and shown as tracked changes in Appendix A to the (April 2020) report and agreed that the consequential changes to the Constitution should be approved by the Monitoring Officer as minor changes under his delegations (minute no. 788a).

2.1.2. The Committee approved the process for consultation with the Chairman, Vice-Chairman and Opposition Spokesperson to enable them to escalate any planning applications to Committee that will otherwise be determined by the Director of Place and Deputy Chief Executive under these temporary arrangements as set out in paragraph 2.6 of the (April 2020) report (minute no. 788b).

2.1.3. The Committee acknowledged that it may not be possible to deal with all planning applications before they go out of time but in recognition of the severity of the current national situation across the country, expressed a desire for applicants to be patient and work with the Head of Planning and his Team and not to submit appeals against non-determination (minute no. 788c).

2.2. The agreed changes did not change the requirement for applications falling into the following categories to be reported to the Committee for determination:

(i) Where the applicant is the Council and the proposed development is a major proposal or for non-operational purposes.	Council
(ii) Where the applicant is a member of the Council or an officer directly or indirectly involved in the planning process.	Council
(iii) Where the Director of Place and Deputy Chief Executive refers the application to the Planning Committee (eg where the proposals are a significant departure from the development plan or otherwise are of a strategic nature in the context of the Council's planning and development policies).	Council

(iv) Where the proposal has other major implications for the authority.	Council
-------------------------------------------------------------------------	---------

However, the following categories have been waived as part of the temporary arrangements since 1 April 2020, meaning that any planning applications falling into these categories have been determined under officers' delegated authority but only with the agreement of all three Planning spokespersons, as explained further in paragraph 2.3 below.

(v) Where a member of the Council has within 21 days of the publication of the weekly list of planning applications requested that an application be determined by Committee. In these cases members should identify the material planning considerations to warrant consideration by Committee.	Council
(vi) Where a parish council has within 21 days of the publication of the weekly list of planning applications requested that an application be determined by Committee. In these cases Parish Councils should identify the material planning considerations to warrant consideration by Committee, otherwise the Director of Place - and Deputy Chief Executive will deal with the application.	Council
(vii) Where three or more relevant letters of representation are received (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 unless following consultation with the Chairman, Vice Chairman and designated Opposition Spokesperson(s) it is considered inappropriate to refer an 'other' application to the Planning Committee for determination. For the avoidance of doubt, the decision not to refer the 'other' application will need to be unanimous in each case and in the event of there not being a consensus, that application will be referred to the Planning Committee for determination. 'Other' applications consist of: <ul style="list-style-type: none"> • Householder applications • Change of use (no operational development) • Adverts • Listed building extensions/alterations • Listed building demolitions 	Council

<ul style="list-style-type: none"> • Application for relevant demolition of an unlisted building within a Conservation Area • Certificates of Lawfulness (191 and 192). <p>(viii) 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 Place - and Deputy Chief Executive, in consultation with the Chairman and Spokesmen of the Planning Committee, is of the opinion that the representation contains no reasonable planning grounds supporting the representation).</p>	
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

- 2.3. To underpin these arrangements as an exception to the usual delegations, since 1 April 2020, draft agenda reports have been shared with the Chairman, Vice Chairman and Opposition Spokesperson remotely and escalated to Committee for determination only if any one of them requests that an application be referred to Committee. Such notifications were required to be received within 3 working days. Those planning applications not escalated for referral have then been processed by the Director of Place and Deputy Chief Executive under delegated authority. These temporary measures have reduced the number of applications needing to be considered by the Committee during the COVID-19 pandemic.
- 2.4. After a full year of operating on the revised scheme of delegation, the Committee is now being requested to consider whether it supports the extension of these arrangements on a permanent basis.
- 2.5. The Employee Scheme of Delegation in place before April 2020 is set out in Appendix A to the report. This sets out the extent of officers' delegated authority up until 1 April 2020.
- 2.6. The Employee Scheme of Delegation in place since the Committee's decision on 1 April 2020 is set out in Appendix B to the report. This sets out the extent of officers' delegated authority since 1 April 2020, noting the process in place as set out in paragraph 2.1.2 above to refer matters to Committee for determination.
- 2.7. A number of options are set out for Members' consideration in section 3 of the report below. Appendix C sets out the proposed Employee Scheme of Delegation in relation to the extent of officers' delegated authority should the Committee be minded to adopt the extension of the arrangements on a permanent basis. This includes the requirement for the Chairman, Vice-Chairman and Opposition Spokesperson to be consulted on planning applications ahead of each meeting of the Planning Committee to enable them to escalate any planning applications to the Committee that will

otherwise be determined by the Director of Place and Deputy Chief Executive under delegated authority.

3. Options

3.1 The option open to Members in relation to the escalation of planning applications is either to:

- support a further temporary extension for a set period whilst the Covid-19 pandemic remains.
- permanent adoption of the extended scheme shown as tracked changes in Appendix C.
- revert back to the original scheme prior to 1 April 2020 (Appendix A).

4. Advice and analysis

4.1 Attached at Appendix D is a summary of the planning applications received since April 2020 and information as to the number processed under delegated powers with the agreement of the three Planning Spokespersons and those that have been submitted to the Planning Committee for determination.

4.2 The Planning Committee is recommended to support the permanent change to the scheme of employee delegations as set out in Appendix C and to recommend to Full Council that the consequential changes be made to the Employee Scheme of Delegations. In addition, this will require a minor change to the Committee's terms of reference, in so far as when an individual Member requests that an application falling for decision under officer delegated powers is referred for Committee determination, this referral is now subject to the matter being escalated to Committee for determination by either the Chairman, Vice-Chairman or the Opposition Spokesperson on the Committee. The proposed change is set out at Appendix E to the report and will ensure consistency between the Committee's Terms of Reference and the Employee Scheme of Delegation.

5. Risk Management

5.1 Although the changes were made on a temporary basis to measures being taken by the Council to, initially, minimise the risk to Councillors, officers and the public in the context of guidance on social distancing it has been felt that it has had a positive effect on the operation of the committee as a whole. With Councillors being able to focus on large scale or significant proposals there has been wider opportunity for in depth debate on each application as there has been a reduction of approximately half the number of items needing to be on each agenda.

5.2 The Committee could revert to the original scheme of delegation as set out in Appendix A this would see a return to much longer agendas. With the provision for remote meetings having been removed from legislation,

meetings will return to an in person format in May with the requirement for attendance by Councillors and officers.

- 5.3 It is vital that decisions are made in an open and transparent way with both applicants and objectors having certainty, so far as is possible, about whether or not their application will be determined by the Committee. Whilst the temporary arrangements have worked well any permanent change needs to be appropriately set out in the Employee Scheme of Delegation and the Committee's Terms of Reference.

6. Consultation

- 6.1 Consultation on the proposals in this report have been undertaken with the Chairman, Vice Chairman and designated Opposition Spokesperson(s) of the Planning Committee.

7. Financial implications

- 7.1 There are no direct financial implications arising from these proposals.

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.

- 8.2 As set out above any changes to the Council's constitution (save for minor amendments which can be made by the Monitoring Officer) are a matter for Full Council

9. Recommendations

- 9.1 The Planning Committee is recommended to adopt the permanent change to the delegations as set out in Appendix C and to recommend to Full Council that the consequential changes be made to the Employee Scheme of Delegations
- 9.2 The Planning Committee is recommended to refer the amendment to the Committee's Terms of Reference, as set out in Appendix E, to Full Council for approval.

Lead officer contact:

Dave Harris, Head of Planning

Tel: (01634) 331575

Email: dave.harris@medway.gov.uk

Appendices:

Appendix A – Extract from Employee Scheme of Delegation (pre April 2020)

Appendix B – Extract from Employee Scheme of Delegation (post 1 April 2020)

Appendix C – Proposed extract from Employee Scheme of Delegation for approval

Appendix D – Summary of planning applications April 2020 – April 2021

Appendix E – Committee Terms of Reference

Background papers:

None