



Report to Planning Committee 11 August 2022

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Report Summary	
Report Title	Planning Committee Scheme of Delegation to Officers Amendments
Purpose of Report	<p><i>(a) To seek Members' approval of amendments to the Officer Scheme of Delegation in relation to Planning Development following the adoption of the Scheme of Delegation on 9 June 2022</i></p> <p><i>(b) For Members to be aware of a trial relating to applications submitted by the Council in relation to the Housing Revenue Account (HRA)</i></p> <p><i>(c) To consider possible amendments relating to applications supported by Town/Parish Councils/Meetings that are recommended for refusal by Officers.</i></p>
Recommendations	<p><i>That Planning Committee</i></p> <p><i>(a) adopt the amended Planning Committee Scheme of Delegation to Officers</i></p> <p><i>(b) consider adopting the Scheme with the possible amendments (reference (c) above)</i></p> <p><i>(c) note the trial in relation to HRA applications</i></p>

1.0 Background

Members adopted the new Planning Committee Scheme of Delegation at its meeting on 9th June following the introduction of the new Governance arrangements. Since this date, it has come to light that a number of powers of entry relating to planning, listed building etc. legislation have not been included within the delegation arrangements to Officers.

In addition, there has also been concern regarding delegation in relation to applications submitted relating to developments under the HRA programme and these, unlike all other Council or Council related applications may be dealt with by Officers.

Lastly, there has been a number of applications requested to be considered by Committee when the Officer recommendation is one of refusal but the Town or Parish supports it. Under the amendments made just over 12-months ago, the ability for applications being refused to be considered by Committee was removed. This report seeks Members' opinion on whether this should be introduced and if so, criteria that might be applied.

2.0 Proposal/Options Considered and Reasons for Recommendation

Powers of Entry

Officers, in undertaking their role are generally welcomed on to sites by owners/occupiers. However, there are occasions, particularly when planning and listed building enforcement investigations and/or are being undertaken that entry is refused. In such instances, Officers may use the rights defined within legislation, if delegated, to

Under section 88 of the Listed Buildings Act 1990, any person authorised by a local authority may enter land for a number of purposes, including the preparation of Urgent Works Notices and Repairs Notices, the execution of works, to ascertain compliance with a Notice and ascertain whether or not a building is being maintained in a proper state of repair. These provisions apply to local authority officers and other individuals engaged in a professional or advisory capacity, which could include architects, engineers or Historic England staff such as members of the Heritage at Risk team if you think our presence or support would be beneficial. Section 88(5) specifically provides rights of entry for the purposes of valuation. In the case of occupied buildings, a minimum of 24 hours' written Notice must be given. If required, evidence should be produced of authority to enter and the purpose for which entry is sought should be stated. Wilful prevention of entry is a criminal offence.

gain access. Forcible access is still not permitted without a warrant from a Magistrates Court. Below is an example, from Historic England, of an authority to enter in relation to listed buildings.

This provides a useful example of when, in the case of a listed building, access might be required as well as for qualified experts employed on the Council's behalf. Such instances for planning are less common although it is recommended that such powers of entry are delegated to enable Authorised Officers to enable this in such circumstances.

Council Applications/ Housing Revenue Account (HRA) Proposals

Members will be aware that under the current Constitution and, has been the case for a number of years, applications where the Council is the applicant or has an interest in the land are presented to Planning Committee for a decision with the exception of HRA applications. Whilst the majority of schemes have been dealt with, further applications are being considered and/or submitted. It is proposed that on a trial basis, and to feed into the review of the Scheme of Delegation, applications submitted that fall under the HRA will be presented to Planning Committee under 135 i):

“Any application which raises significant issues such that in the opinion of the Authorised Officer, it would be prudent to refer the application to Planning Committee for decision.”

No change is therefore required to the Constitution, but the trial will enable an understanding of potential increase in workload for Planning Committee before Full Council consider the review of the Constitution later this year.

Applications supported by Town/Parish Councils and Recommended for Refusal by Officers

Under the Scheme of Delegation, where an application is recommended for refusal, it cannot be referred to Planning Committee by the Ward Member(s). The rationale for the change, introduced in 2021, was applicants have a right of appeal and hence they still had an avenue open to them in trying to gain permission.

Prior to this change, recommendations contrary to the Town/Parish Council response, were referred to the Ward Member(s) to ask if they considered the application should be presented. If a request was received, with planning reasons, the request would be referred to the Panel, comprising the Chairman and Vice-Chairman of Planning Committee and Business Manager – Planning Development. This, as the Committee report of the 2nd March 2021 notes, resulted in delay to decision making as well as frustration for Members. Data presented to Committee in 2021 detailed that in an approximate 12-month period, 171 applications were referred to Members from which 33 requests for the application to be presented to Committee were received. In addition, 8 requests were made following receipt of the weekly list.

Of late, there has been frustration that in accordance with the Scheme of Delegation, Officers are refusing applications where the Town or Parish Council/Meeting is in support. On the basis of the data in 2020 being reflective of current applications and responses, should the same number of requests be received, the number of items could increase by approximately 3 per month as well as an increase with HRA applications.

However, whilst the majority of Town/Parish Councils are aware of policies within the local plan and contents of the National Planning Policy Framework, they are less likely to be aware of planning case law and/or appeals that might have a bearing on the development proposed. It is therefore suggested, that if Committee wish to amend delegation arrangements, that:

- when the Officer notifies the Ward Member(s) of the recommendation, the reason for refusal is provided, together with the Town/Parish Council/Meeting response. As with recommendations of approval currently, the Ward Member(s) will have 5 working days in which to respond to the case officer;
- the Ward Member, if they wish the application to be referred to Committee for a decision, will be required to provide a planning reason/statement to justify why they consider the application should be approved i.e. how it either complies with the policy(ies) and/or how material circumstances outweigh the policy harm (noting that Section 38(6) of the Town and Country Planning Act 1990 requires decisions to be made in accordance with the plan unless material considerations indicate otherwise).

- If the latter is provided within the 5 working days, the case officer will prepare the report for Committee responding, as appropriate, to the Member's reason/statement.

The views of Planning Committee are sought on whether or not the above should be included within the Scheme of Delegation.

The amendments to the Scheme of Delegation are provided in bold text within Appendix 1.

3.0 Implications

In writing this report and in putting forward recommendations, Officers have considered the following implications; Data Protection, Digital and Cyber Security, Equality and Diversity, Financial, Human Resources, Human Rights, Legal, Safeguarding and Sustainability, and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Appendix 1 – Planning Committee Scheme of Delegation to Officers