

## **REPORT TO PLANNING COMMITTEE – 23 JULY 2019**

### **REVIEW: SCHEME OF DELEGATION**

#### **Introduction**

The current Scheme of Delegation (SoD) forms part of the Council's Constitution and sets out a set of criteria for committee and officer decisions.

The purpose of this report is to set out the findings of an internal review of the SoD in relation to planning matters and to request that Members consider amending the SoD in line with the concluding recommendations. Should the Planning Committee support the proposed changes, the matter would then be advanced to the Councillors Commission and finally Full Council in due course.

The reason for the review is due to a number of factors.

- The SoD was last updated in July 2018. It is best practice to review this from time to time and it makes sense to do this early into the new Council's administrative term.
- Also of importance is to see if there is scope to reduce the size and frequency of agendas (and the length of time that these meetings last) thereby reducing Member time and officer resources. More importantly by reducing agenda sizes it would help focus attention on the more complex and strategic applications as well as improving the (perceived) quality of decision making, particularly towards the end of long committee meetings.
- Furthermore, reducing the number of planning matters that need to be reported to the Planning Committee should assist in helping to meet the stretched internal performance targets introduced in the NSDC Community Plan (adopted 2019) which aspires that 90% of all applications should be determined within a specified target date, as opposed to current national performance targets of 60%, 65% and 80% depending on the type of application.
- There are a number of application types that the SoD does not currently capture which needs to be rectified, such as the new 'Planning in Principle' and 'Technical Details Consent' application type.

#### **Scope of Review**

This review has focused upon the SoD which in simple terms is what effectively sets the agenda for who determines what.

The operational elements of how the Committee is serviced, arrangements for site inspections, the amount of debate, officer presentations and public speaking are all matters for the Planning Committee itself to review. They do not require any decision-making at a constitutional level, which this report seeks to cover. I am aware for example that public speaking has been examined previously and there was no appetite to allow this beyond the existing arrangements which allows for a representative of the Town/Parish Council and Local Ward Member to address the committee for 5 minutes each. This was on the basis, I understand, that Town/Parish Councils are elected to represent the voice of their parishioners as a whole. Additionally I understand it was concluded that allowing third party members of the public and applicants/agents to speak would

be unacceptably disproportionate in terms of capturing the material planning considerations of relevance. Members are invited to review public speak as part of any operational review of the Committee once it has been operational for 6 months in the new Council cycle.

## **PART 1: REVIEW OF EXISTING COMMITTEE ARRANGEMENTS**

### **Existing Committee Arrangements at NSDC**

The Local Planning Authority as a whole generally deals with over 1,000 planning and related applications a year.

The Planning Committee at Newark and Sherwood District Council (NSDC) is scheduled to meet once a month. Over the past few years a number of additional committee meetings have been required due to the volume and importance of applications requiring determination.

During 2017, an additional four committees (so 16 for the whole year) had to be scheduled due to complexities and volume of matters and during 2016 an additional 3 committee meetings were held.

During 2018 there were a total of 14 planning committee meetings starting at 4pm lasting on occasions for almost 4 hours. Last year alone the time spent in planning committee was 39h12m minutes, excluding site inspections, which are ordinarily conducted by bus on the morning of the planning committee.

This pattern looks set to continue into 2019 as the number of applications being determined by the planning committee during the first quarter was 43, (a total sitting time of 10hrs46m) averaging at over 14 applications per month. Furthermore, the June committee meeting opened at 4pm and lasted until almost 9pm.

### **Existing Committee Arrangements at other Authorities**

#### *Frequency of Meetings*

Like NSDC, most authorities meet monthly. South Kesteven meet 3-weekly and North Kesteven District Council only meeting when required, which was 5 times during 2018. Some authorities held additional meetings (Rushcliffe and Bolsover) during 2018. The number of meetings together with the sitting time of the committee meetings is set out in the table below for comparative purposes:

*Table 1: Other Authority Committee Arrangements*

<b>Council</b>	<b>Total 2018 hours</b>	<b>Total number of meetings 2018</b>	<b>Site visit?</b>
Mansfield District council	Not specified	13	Not stated
Bassetlaw District Council	16hrs 49 mins	11	yes
Rushcliffe Borough Council	35hrs 15 mins	14	Not stated

Gedling Borough Council	10hrs 16 mins	11	Not stated
Bolsover*	12hrs 6 mins (2 extraordinary meeting timings unknown)	12	yes
South Kesteven District Council	43hrs 28 mins	13	yes
North Kesteven District Council	7hrs 53mins	5	Not Stated
West Lindsey District Council	14hrs 8mins	12	yes
Broxtowe	Not specified	12	yes
<b>Newark &amp; Sherwood District Council</b>	<b>39 hrs 12 mins</b>	<b>14</b>	<b>yes</b>

(\*): Cancelled meetings on the 10<sup>th</sup> of January and the 11<sup>th</sup> of April due to lack of business. Hosted extraordinary meetings on 18<sup>th</sup> of April and 26<sup>th</sup> of June

As can be seen from the table above, the NSDC Planning Committee is amongst the council's having the longest sitting time, second only to SKDC who sat for longer, bearing in mind they meet 3 weekly. North Kesteven sat for just 7hrs 53m over the entire year, with the average sitting time for the council's where data was available being 16h 38m.

### *Levels of Delegation*

In order to inform options for potential amendments to the SoD, analysis was initially undertaken on the applications considered by NSDC planning committee during the first quarter of 2019 in terms of agenda sizes which was then compared to other authorities. It was established that during the first quarter (January to March 2019) the Planning Committee at NSDC determined 43 applications (see Table 2 below), which was the highest in the sample of other authorities considered and over 3 times the average of the other authorities combined.

*Table 2: Number of applications determined by committees during Quarter 1 of 2019*

<b>Name of Authority</b>	<b>Number of Applications determined in Q1, 2019</b>
<i>Newark &amp; Sherwood District Council</i>	43
Mansfield District Council	12
Bassetlaw District Council	10
Rushcliffe Borough Council	16
Gedling Borough Council	17
Bolsover	3
South Kesteven District Council	10
North Kesteven District Council	0
West Lindsey District Council	10
Broxtowe	19
<b>Average</b>	<b>14 (an average of 4.66 items per committee)</b>

It was also established that the level of delegation at NSDC was 88.75% in 2018 which is lower than other authorities (where figures have been provided) which the table below sets out.

Table 3: Levels of Delegation in 2018 by Council

Name of Authority	% of Delegation in 2018
<i>Newark &amp; Sherwood District Council</i>	88.75
Mansfield District Council	90
Rushcliffe Borough Council	96
Gedling Borough Council	95
Erewash	92
Broxtowe	92
<b>Average</b>	<b>92.29%</b>

### **Existing Scheme of Delegation at NSDC**

The existing SoD is attached for your convenience. However in simple terms the existing scheme of delegation sets out the following:

Applications that **WILL** be determined by the Planning Committee:

- Major applications (10 dwellings or more, floorspace of 1,000m<sup>2</sup> or greater, site area of 1 hectare or more) where officer recommendation does not align with views of Parish/Town Council, or where contrary to view of a statutory consultee\*;
- Minor applications of between 1 and 9 dwellings including Gypsy and Traveller Sites, where the officer recommendation doesn't align with Parish/Town Council views or statutory consultee\*;
- Applications referred by Ward Councillor or adjacent ward Councillor and there are planning reasons for this;
- They would either generate significant employment or where submitted by community or voluntary organisation and result in community benefit and would otherwise be refused;
- Applications made by Members or officers that have direct involvement in the application.

\* provided the view is based on material planning considerations

Applications that will **NOT** be determined by the Planning Committee where:

- Major applications where the recommendation aligns with the views of the Town/Parish Council;
- All applications where recommendation is in line with representations from all consultees (but doesn't necessarily align with views of neighbours)
- All applications where the recommendation for refusal is based on Environment Agency representation regardless of others support;
- Highways England have directed refusal;
- All non-housing minor applications (including applications on sites of less than 1 hectare in size or are 999m<sup>2</sup> or less in new floorspace, householders, changes of use, listed building consents, advertisement consents, plus notifications) contrary to views of Parish/Town Council's/statutory consultee.

The existing SoD refers to Q codes (codes used to categorize the type of applications and these are used in the planning performance returns submitted quarterly to the government) which can be confusing as these have changed over time. It is therefore proposed that reference to these codes

is deleted to simplify matters.

### **Existing Schemes of Delegation at Other Authorities**

There are many ways in which other Authorities set out their SoD and committee arrangements.

For example Gedling Borough Council only take 'major' application types to the committee or those submitted by officers or members.

Rushcliffe Borough Council underwent a Review by the Planning Advisory Service (PAS; a peer review) in 2017 and the result made amendments to the SoD so that the main driver for what needs to be determined by the committee is now the local ward member's views rather than those of the parishes or town council's.

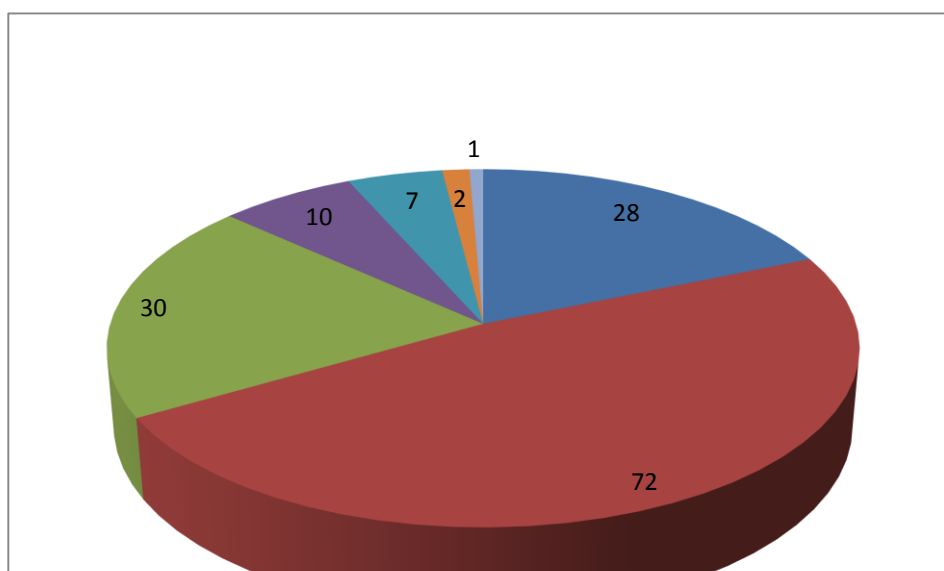
Other Authorities such as Mansfield District Council are able to delegate most non-major applications so long as there are less than three objections and this has been agreed with the Head of Services and the Chair plus another member of the planning committee. Erewash Borough Council delegate all decisions unless they receive 4 or more representations, are called in by members, are a departure to the Development Plan or are council applications or on land the council owns. These are just a few examples of how others choose service their functions.

### **Types of Applications being considered by NSDC Committee**

A detailed analysis of the types of applications that are being considered by the NSDC planning committee over a sample period of one year (2018) has been undertaken.

As can be seen from the figure below, it was established that of the 150 applications that Members considered (it should be noted that some of these 150 applications had to be considered by the committee on more than 1 occasion for various reasons) the majority were minor dwellings (between 1 and 9 dwellings) followed by other minor applications (including non-residential applications with floor space of 999m<sup>2</sup> or less, site areas of 1 ha or less, changes of use etc) followed by majors (all types) with householders, listed buildings, advertisements and neighbouring planning authority consultations following.

*Figure 1: Type of Applications determined by Committee 2018*



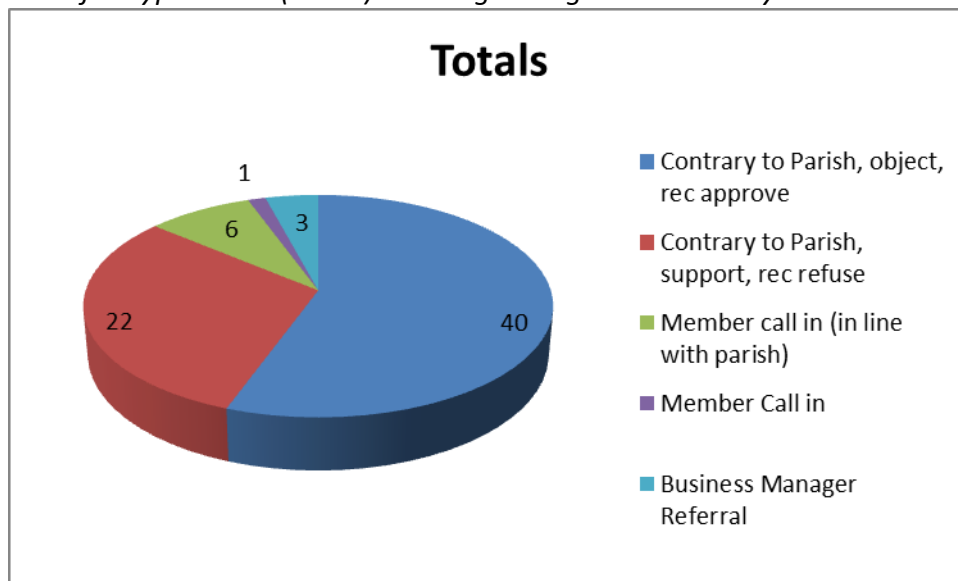
## Reasons why Applications were considered by NSDC Committee

Having established which types of application were determined by the committee, attention was then turned by the reasons as to why these required committee consideration.

### Minor Dwellings

The majority (72 in no.) of applications determined by the planning committee were for between 1 and 9 dwellings (minor dwellings type) during 2018. The reasons for this are presented in the table below:

*Figure 2: Reasons for Type Minor (1 to 9) dwellings being determined by committee in 2018*

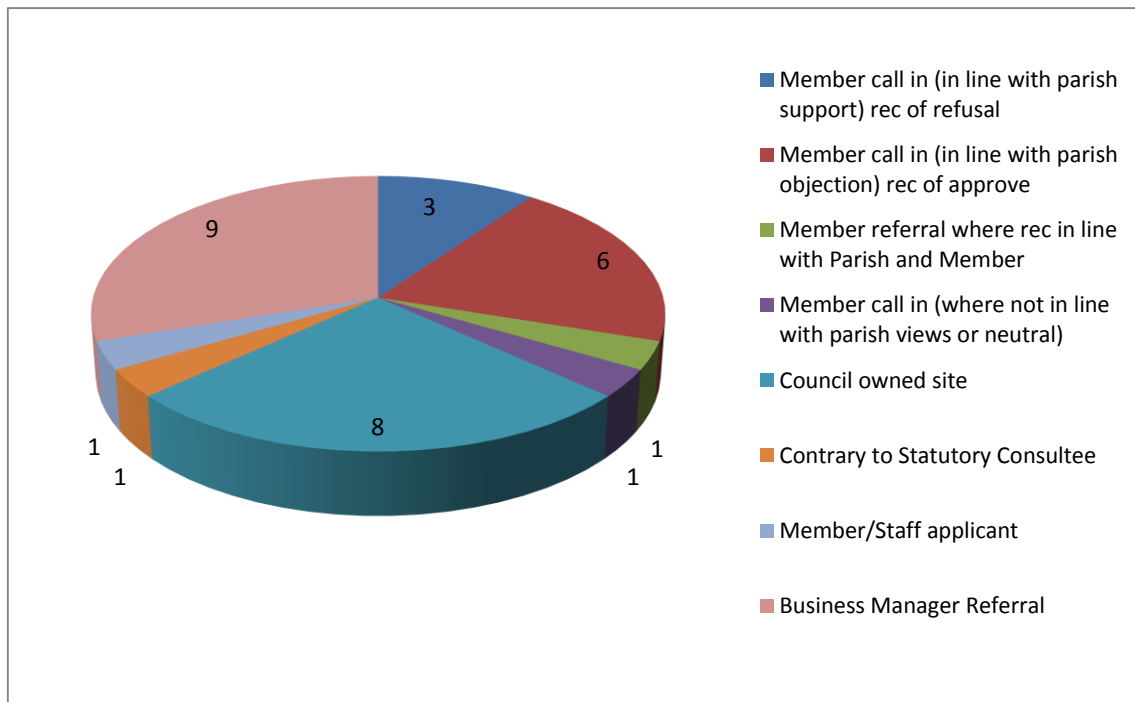


As can be seen, the vast majority of these types of applications were determined by the Planning Committee because the officer recommendation was for approval, contrary to the view of the Parish or Town Councils. The second highest reason was where, conversely, the recommendation was for refusal but the Parish/Town Council supported the scheme. Most member referrals were in line with the views of the Town/Parish Council (so would have gone to committee anyway) with only 1 being referred by Members either against the Town/Parish views or where they were silent. Three were determined based on the Business Manager referring these to committee under existing arrangements as it was judged that these cases warranted debate by the committee.

### All other 'minor' developments

The current SoD does not require applications that are non-residential minor types of development to be determined by committee where the recommendation is contrary to the parish or town councils view. Therefore the reasons why these are determined at committee are different. The figure below shows that the majority of time, they are called to committee by Members (9 in total) with referrals by the Business Manager following closely behind with council owned sites being the third most frequent reason they go before the committee.

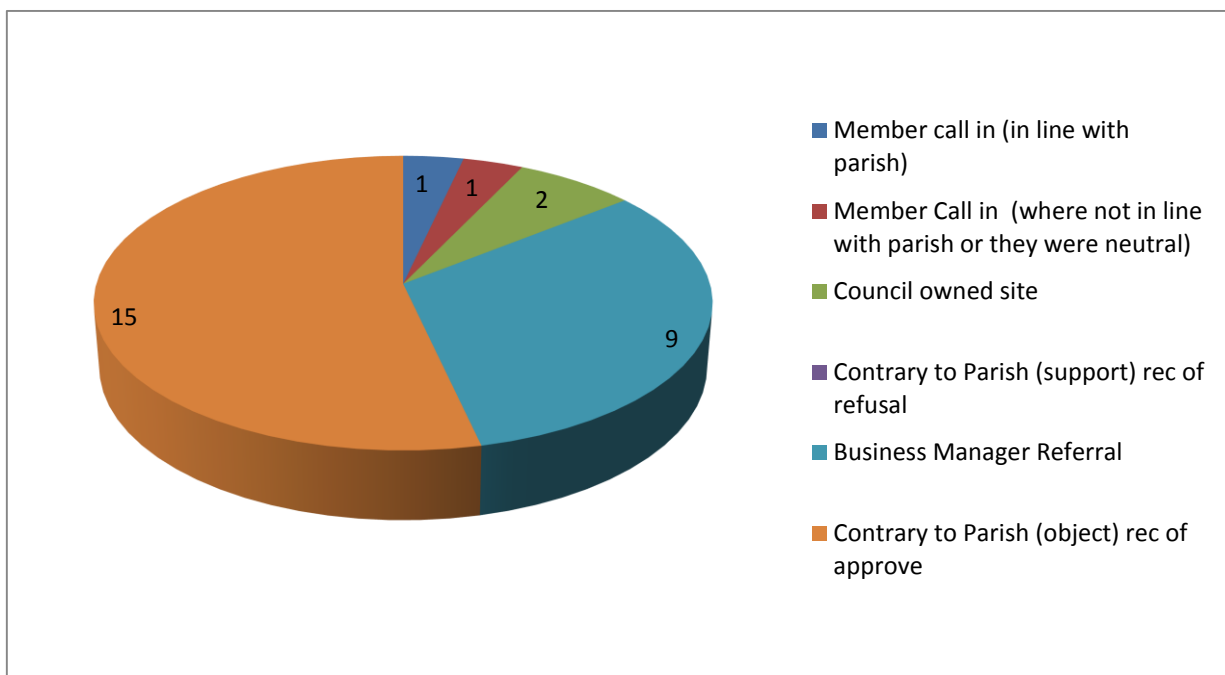
*Figure 3: Reasons for Type Minor non-residential types of applications being determined by committee in 2018*



#### All Major Applications

The vast majority of major applications are determined by the committee because the officer recommendation does not align with the views of the parish/town council. The Business Manager referrals include applications that are particularly controversial or sometimes relate to schemes which are at appeal and require members to provide a steer in order to help successfully defend a previous decision. The figure below shows the split.

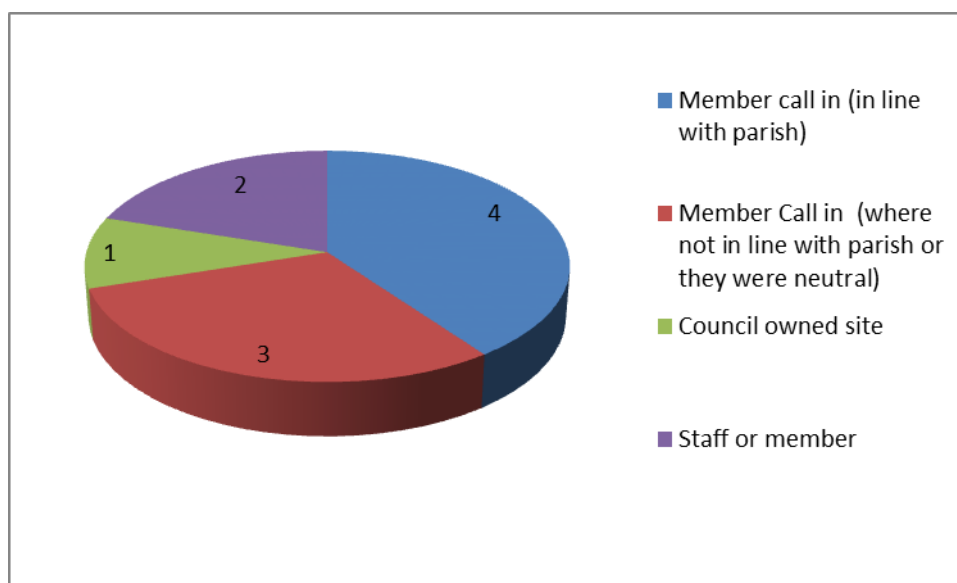
*Figure 4: Reasons for 'Major' applications types determined by the committee in 2018*



### Householder applications

The current SoD requires householder applications to be determined by the committee only where these have been referred by members, where the site is owned by the Council or where a staff member or councilor has had a direct involvement in the scheme; such as they are the applicant. Over the year 10 such applications were determined by the committee, which whilst not seeming many, is almost the size of a current planning committee agenda.

*Figure 5: Reasons for 'Householder' applications types determined by the committee in 2018*



### Other types of applications

Other types of applications include 7 listed building applications, a neighbouring planning authority consultation requiring member input and an advertisement consent. The principal reason that the 7 listed building applications were presented to the committee was because these were associated applications that related to another type of application also on an agenda. Whilst not all were not necessarily required to be determined by committee, they were taken for completeness and consistency. No further analysis was considered necessary for these application types given the relatively low numbers involved.

## **PART 2: PROPOSED CHANGES TO THE SCHEME OF DELEGATION**

Based on the findings of the analysis undertaken, a number of options were considered as to how the SoD could be amended in order to achieve the objectives.

These options center largely around the way in which minor dwelling applications types are considered given that these were the largest type of applications that committee considered last year.

### Option 1

Considers changes as follows:



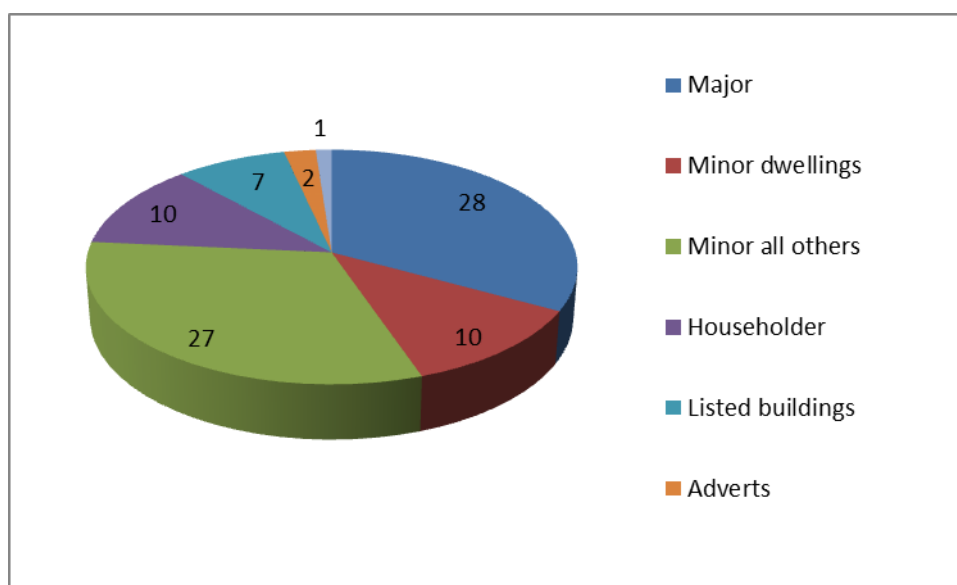
➤ **Minor Dwellings to be delegated contrary to Parish/Town Council regardless of the professional recommendation**

Removing the need to refer minor dwelling applications where that recommendation is contrary to parish/town council (regardless of what that recommendation is) to the committee would allow a greater increase in delegation which more aligns with how other councils operate. In other words, it would allow all minor application types to be treated in the same way whereby they would only go before committee if they were called in by a Member.

This option is caveated that there would be a new onus on the case officer to first contact the local ward Member(s) to discuss the application and allow them the opportunity of 'referring' the application to committee. This would increase dialogue and fostering and improving good member-officer relations.

Profiled over the year of 2018 it would have reduced the number of matters presented to committee by 43.33% to 85 items if this had been in place. It may have negated the need for the two additional committee's and would have produced an average agenda size (taken over 12 months) to c7 items. This is what the types of application would have looked like if this approach had been undertaken.

*Figure 6: Example annual agenda on basis of Option 1*



It would of course be reasonable to assume that should this option be adopted, Members may choose to refer a proportion of minor housing type applications to committee as they currently do for non-residential minor developments. If this amendment resulted in a similar level of referrals to those experienced now for the non-residential applications it would be reasonable to assume that this may increase agenda sizes by 17 to 102 per year which would result in agenda sizes of around 10 per month. As such setting out clearer criteria for Member referrals is considered appropriate which will be explored shortly.

### Option 2

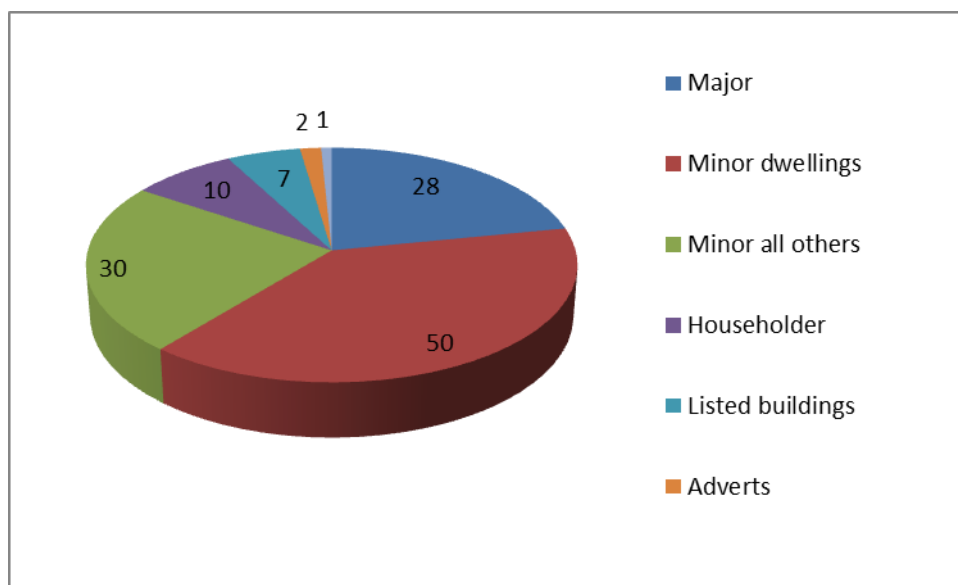
Considers changes as follows:

- **Minor Dwellings to be delegated Contrary to Parish/Town Council where officer recommendation is for refusal only**

Officers have considered other options including the option that minor dwellings could be delegated where the recommendation is for refusal only regardless of Town/Parish Councils support. This was attractive on the basis that there is a right of appeal for refusals that can be exercised.

However profiled over the year of 2018 it would have reduced the number of matters presented to committee by just 14.66%, from 150 to 128 which in my view, does not go far enough in reducing the volume of matters for committee to consider. As illustrated by the figure below this still would mean that the majority of applications determined by the committee remain as minor dwellings; Figure 7 illustrates what this would have meant for committees during 2018 if this had been in place. I am aware that where the Planning Advisory Service (PAS) has been involved in reviews of other Council's committee arrangements one of the criticisms that has been levelled, is that committee were focusing on minor developments rather than operating on a more strategic level and dealing with major schemes, which could well be the case here with this option.

*Figure 7: Example annual agenda on basis of Option 2*



### Option 3

Considers firming up:

- ***Member Call In/Referral Powers***

Members currently have powers to call in applications/cases to the committee. In simple terms this operates as follows:

Local Members call in powers for their own ward provided:

- A written request is made to the Authorised Officer prior to the date on which the application would otherwise be determined by officers acting under delegated powers.
- The request sets out clear planning reasons behind the referral request.

- The recommendation of officers is different to the opinion of the local member having regard to the interests of their ward area.

Adjacent Ward Members have call in powers subject to the above 3 criteria provided also that:

- The relevant ward members has been notified prior to the request being made

Any Member may call in any application where in their opinion it would have a material impact on the whole or part of their ward subject to the above 4 criteria and subject to:

- The Group Leader of the relevant group of the Members making the request has agreed to the referral

All of these are currently determined at the discretion of the lead planning professional (usually the Business Manager) together with the Chair and Vice Chair.

This current system operates reasonably well however would benefit from minor changes. As discussed above, it is considered appropriate that in exchange for allowing more delegation, there should be a more open dialogue between Members and officers such that a new caveat is proposed so that before the application is referred to committee the Member first discusses the application with the case officer or lead planning professional. In practice this already occurs but this proposed change would seek to firm up the process. Finally the lead planning professional together with Chair and Vice Chair will then need to be satisfied that the reasons for call in are based on planning grounds that warrant debate by the Planning Committee.

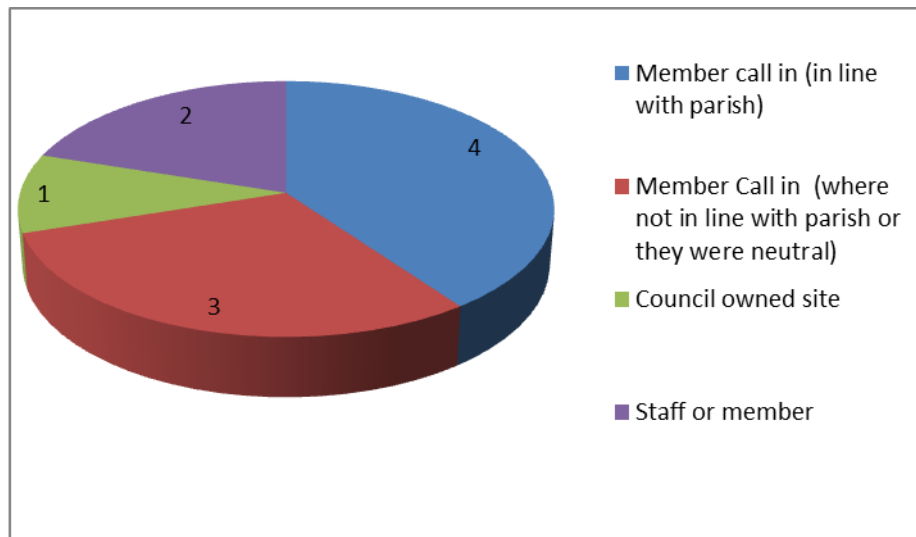
#### Option 4

Considers changes as follows:

##### ➤ **Possible Change to Householder Call-In**

Given that householder applications regularly feature on planning committee agenda's, consideration has been given to how more delegation could take place for these types of applications. Householder applications only go before the committee when called in by the local Member. One possibility could be that these Member referrals are required to align with the views of the Parish Council unless agreed otherwise by Chair and Vice Chair. However of the 10 householder applications that were determined by the committee during 2018, this would only have reduced the number that would have gone by 3 applications as demonstrated below. It is therefore not recommended that this be specifically amended at this time. It is hoped that the minor changes to the reinforcement of the Member call in process which seeks to open dialogue will assist with this.

*Figure 8: Example annual agenda on basis of Option 4*



### Option 5

Considers changes as follows:

- **Applications to Vary or Remove Planning Conditions not automatically determined by Committee**

It is also recommended that Members consider removing the need to take applications to the planning committee where applications are made pursuant to Section 73 of the Planning Act (i.e. they relate to the proposed removal or variation of planning conditions) regardless of the parish or town council's views unless the parish/town council's comments give rise to any new material planning impacts not previously considered.

This is recommended because sometimes a parish/town council might object to the principle of the development or a highway impact when the council is only tasked with looking at for example a design change to a dwelling and is not able to reconsider the matters which have been raised as objections again. This would reduce false hope of the matter being considered afresh when decision makers are simply not able to.

Last year there were 11 such applications that were determined by the committee, the majority of these were relating to minor dwellings so would be potentially be reduced if changes were made to the SoD in respect of these anyway. Having reviewed the statistics on this, it may have avoided 3 applications being brought before the committee overall.

These applications will from now on have a new suffix of S73 or S73M (instead of FUL/OUT etc) to assist in these types of applications being easily identifiable.

### Option 6

Considers changes as follows:

- **Major Applications where Parish/Town Council Support Contrary to Recommendation**

Another option that has been explored is for officers being able to delegate major applications for refusal even when the parish/town council support these. This was not a situation that arose

during 2018 and overall it is not considered a matter that needs to be amended at this time.

### **Conclusions**

This review has shown that the 'planned' frequency of Planning Committees of once per month generally works well and is consistent with how other authorities operate in our area generally. Additional planning committee's over and above the 12 planned meetings each year could potentially be avoided if more delegation was possible, albeit there is on occasions a necessity for additional committees for other reasons. No changes are recommended to the general frequency of meetings.

The current level of delegation at 88.75% is amongst the lowest compared to other Council's in the area. During the first quarter of this year, at 43 items, NSDC Planning Committee determined more than 3 times more than the average number of items than other authorities in a sample comparison. The average committee sitting times for last year amongst peers was 16h38m whereas NSDC sat for more than double that time (39h 12m) over the year, excluding site visits. Officers are acutely aware that decision making needs to be fair and equitable to all, which when agendas are long can be perceived by some to not help with this given concentration levels naturally drop as meetings run on.

The majority of matters that currently need to be determined by the Planning Committee are 'minor dwellings' (between 1 and 9 dwellings) types and this is largely because the officer recommendation is contrary to the Parish/Town Councils which under the current SoD requires committee intervention.

If these were able to be delegated, subject first to liaising with the local ward member, without reference to the committee it could (if profiled against last year's agendas) increase delegation to 92.05% and result in more manageable committee agenda sizes. This would also align with the average levels of delegation across other authorities that were considered. The matters on the committee are likely then to relate to major and more complex applications of importance to the district. Members would retain their call in powers subject to a number of caveats, with a new one of requiring discussion with the case officers first and convincing the Chair and Vice Chair of the Planning Committee and the lead planning officer (usually the Business Manager or Senior, known as the Authorised Officer in the attached SoD) that it warrants debate by the committee.

Other proposed amendments relate to not automatically bringing applications for the variation or removal of conditions back to committee, regardless of Parish/Town Council views unless new material planning issues have been raised which the decision would influence.

Of the options considered above it is recommended that options 1, 3 and 5 are all pursued.

### **OVERALL RECOMMENDATIONS**

That the attached proposed revisions to the SoD are noted and Members consider ratifying the following recommendation to the Councillor's Commission:

These changes summarized are that **ALL 3** of these options are taken forward:

- **Option 1:** Minor Dwellings to be delegated Contrary to Parish/Town Council regardless of the professional recommendation subject to officers first contacting the relevant Local

- Ward Member(s) to allow opportunity of referral; **and**
- **Option 3:** More Clarity on Member referral/call in powers; **and**
  - **Option 5:** Removing the need to take applications (major and minor types) to the planning committee where applications relate to the proposed removal or variation of planning conditions regardless of the parish or town council's views unless the parish/town council's comments give rise to any new material planning impacts not previously considered.

#### Background Papers

For further information, please contact Clare Walker on ext 5834.

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