

## **APPENDIX 1: PROPOSED CHANGES TO THE COUNCIL'S CONSTITUTION**

Members will be aware that under the terms of the Council's constitution the Planning Committee is able to delegate any matters within its remit to Officers.

As set out in the accompanying report, it is proposed to amend the Scheme of Delegation to allow a greater level of delegation. In addition I also seek to add matters of clarification for the avoidance of any doubt.

The Scheme of Delegation (SoD) outlines which applications and notices of various types are normally determined at Planning Committee and which are determined by an Authorised Officer of the Council.

The following sets out the approved SoD with ~~striketrough~~ text used where it is proposed to be omitted and **bolded text** where it is new or amended. Members will note that reference to DCLG codes has been omitted to simplify matters. The main change is that the emphasis has flipped, with the default position now being that the Authorised Officer may determine matters and applications unless expressly stated within the list of exceptions.

### **"PART 2 of the Constitution, Scheme of Delegation"**

The following functions are those of the Local Planning Authority which under the Constitution are delegated to the Planning Committee. It is then for the Planning Committee to allow further delegation to Authorised Officers.

#### **"PLANNING COMMITTEE"**

##### Remit

- 1.0 To discharge functions relating to town and country planning and development ~~control~~ **management**, including:
  - 1.1 Power to determine applications for planning permission.
  - 1.2 Power to determine applications to develop land without compliance with conditions previously attached.
  - 1.3 Power to grant planning permission for development already carried out.
  - 1.4 Power to decline to determine any application for planning permission.
  - 1.5 Duties relating to the making of determinations of planning applications.
  - 1.6 Power to determine applications for planning permission made by a local authority, alone or jointly with another person.
  - 1.7 Power to respond to consultation by neighbouring local planning authorities or the Secretary of State.
  - 1.8 Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.
  - 1.9 Power to determine applications for Non Material Amendments to a planning permission.
  - 1.10 Power to discharge or refuse to discharge planning conditions attached to a planning permission or any other relevant consents.
  - 1.11 Power to enter into **and vary** agreements regulating development or use of land.
  - 1.12 Power to issue a certificate of existing or proposed lawful use or development, **including those under Listed Building powers.**
  - 1.13 Power to serve a completion notice.
  - 1.14 Power to grant consent for the display of advertisements.
  - 1.15 Power to authorise entry onto land.

- 1.16 Power to require the discontinuance of a use of land.
- 1.17 Power to determine whether it is expedient to take enforcement action in instances where there has been a breach of planning control.
- 1.18 Power to serve a planning contravention notice, breach of condition notice temporary stop notice or a requisition for information or stop notice.
- 1.19 Power to issue an enforcement notice.
- 1.20 Power to apply for an injunction restraining a breach of planning control.
- 1.21 Power to determine applications for hazardous substances consent and related powers.
- 1.22 Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.
- 1.23 Power to require proper maintenance of land.
- 1.24 Power to determine applications for listed building consent and related powers **granted to local authorities pursuant to the Listed Building and Conservation Areas Act 1990.**
- 1.25 Power to determine applications for ~~conservation area consent~~ **Permissions in Principle and the related Technical Details Consent.**
- 1.26 Duties relating to applications for listed building consent, ~~and~~ conservation areas, **Listed Building Heritage Partnership Agreements, and Local Listed Building Consent Orders consent.**
- 1.27 Power to serve a building preservation notice and related powers.
- 1.28 Power to issue enforcement notices and related powers.
- 1.29 Power to take action under Sections 224 and 225 of the Town and Country Planning Act 1990 - enforcement of control over advertisements, and regulations made under section 220 thereof.
- 1.30 Powers to acquire a listed building in need of repair and to serve a repair notice.
- 1.31 Power to apply for an injunction in relation to a listed building.
- 1.32 Power to execute urgent works **and recover costs by any appropriate means.**
- 1.33 Rights of way functions for which the Council is responsible.
- 1.34 Protection and preservation of trees and hedgerows, including as necessary the making, confirmation, modification and revocation of Tree Preservation Orders.
- 1.35 Power to determine applications for works and felling of trees covered by a Tree Preservation Order.
- 1.36 Power to determine notifications for works to Trees in Conservation Areas.
- 1.37 To exercise the Council's powers with regard to the Hedgerows Regulations 1997.
- 1.38 **To exercise the Council's powers with regard to the Community Infrastructure Levy Regulations 2010 (as amended).**
- 1.39 **Power to determine prior approval notifications and consents.**
- 1.40 **Power to make screening and scoping opinions under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended).**

- 2.0 To consider and make recommendations to the Policy & Finance Committee and/or Council on the formulation of the Local Development Framework and other plans, policies, protocols or guidance impacting on functions within the remit of the committee.
- 3.0 Power to make payments or provide other benefits in cases of maladministration ~~etc~~ **and in respect of the local settlement of complaints** pursuant to Section 92 of the Local Government Act 2000 in respect of matters falling within the remit of **the planning function.**
- 4.0 To make recommendations to the Policy & Finance Committee and Council on the formulation of the budget insofar as it impacts on the remit of this Committee.

**NOTE:**

~~Some of the functions set out above are delegated to officers (see Section 6 post). However, for the avoidance of doubt, the following functions, are expressly reserved to committee for determination and cannot be discharged by an officer:~~

**The functions set out above are delegated to officers with the exception of the following functions, which are expressly reserved to committee for determination and cannot be discharged by an officer:**

- ~~1. Planning applications which involve a significant departure from the statutory development plan.~~
- 2. 1 Applications submitted on behalf of the Council or where the Council has an interest in the development save for any applications submitted on behalf of the Council or where the Council has an interest in the development as part of its HRA housing development programme.**
- 3. 2 Matters of significance to the district or which may potentially give rise to significant financial consequences except in cases of extreme urgency where delegated powers may be exercised.**

~~The Planning Committee has approved the following Scheme of Delegation. It outlines which applications are normally determined at Planning Committee and which are determined by an Authorised Officer of the Council.~~

~~Below are the details of the Scheme of Delegation operated by the Council. The Authorised Officer(s) of the Council may determine the following planning and related applications without reference to Planning Committee:~~

- ~~1. Applications for smaller developments, (DCLG Codes 14-27 excluding 17 Gypsy & Traveller Pitches)[previously codes 10-19], and applications for prior notification in relation to, agricultural works, telecommunications, tree and hedgerow removal works can be dealt with under delegated powers by the Authorised Officer of the Council having considered comments received in relation to the application.~~

~~The Authorised Officer(s) of the Council may determine all applications and deal with all matters listed above with the exception of the following which will be reported to Planning Committee in the following circumstances:~~

- ~~1. 3. Minor or All major applications (defined as 10 or more dwellings, where new floor space would be 1,000m<sup>2</sup> or greater or have a site area of 1 hectare or greater) for residential (including Gypsy and Traveller Pitches), office, industrial, storage, distribution or retail developments (DCLG Codes 1-13 and 17)[previously codes 1-9] can be dealt with as follows: where:~~
- The recommendation is contrary to the response received from the Town or Parish Council **or Parish Meeting**, provided **that** such a response is based on material planning considerations<sup>1</sup> **unless the recommendation is for refusal based on The Environment Agency's representations or Highways England direct refusal of an application regardless of whether or not other consultees support the application;** or
  - The recommendation is contrary to the response received from a statutory consultee.

4. The relevant planning application has been submitted by a community or voluntary organisation, a town or parish council or a social enterprise and could in the opinion of the Authorised Officer, in consultation with the Chairman and Vice-Chairman of the Planning Committee, result in a significant community benefit and would otherwise be recommended by officers for refusal.

- ~~• The relevant planning application involves a commercial proposal which could potentially deliver significant employment opportunities (the determination of “significant” to be decided by the Authorised Officer, in consultation with the Chairman and Vice-Chairman of the Planning Committee (significant to be determined according to local circumstances) and the application would otherwise be recommended by officers for refusal.~~

~~An application may be determined under delegated powers by an Authorised Officer of the Council when:~~

- ~~• The decision is in accordance with the representations received from all consultees;~~
- ~~• The decision accords with representations from statutory consultees and the Town/Parish Council (provided such a response is based on material planning considerations<sup>1</sup>) but is contrary to representations from non-statutory consultees, such as neighbours;~~
- ~~• The decision is for refusal based on The Environment Agency’s representation whether or not other consultees are supporting the application;~~
- ~~• The Highways Agency direct refusal of an application;~~
- ~~• Representations raise only non-planning matters.~~

~~3.~~

5. Applications which have been submitted by District Councillors, Senior Officers\* or Officers who may otherwise have a direct involvement in the determination of the application or where Councillors or Officers have a direct interest in the application, will be determined by Planning Committee. (\*Senior Officers shall be defined as Chief Officers and Deputy Chief Officers as defined by the Local Government and Housing Act 1989 (currently members of the Corporate Management Team and Business Managers)

4.

6. Where an Authorised Officer has delegated powers he or she may refer the matter to Planning Committee for determination rather than exercise that delegated authority themselves particularly where, in their judgement, the specifics of an application warrant determination by the Planning Committee.

### **Caveats**

- A) Where a major application is made under Section 73 of the Act to vary or remove planning conditions these will only be considered by the planning committee where they raise new material planning impacts arising from the subject of the conditions themselves.**
- B) For proposals of between 1 and 9 dwellings, where the officer recommendation is contrary to the views of the host Town or Parish Council (or Parish Meeting), the relevant Ward Member(s) shall be first notified and given the opportunity to request ‘referral’ (see Section 7 for process) to the planning committee.**

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<sup>1</sup> The determination of what constitutes a material planning consideration should be determined by the Business Manager, Planning Development Growth and Regeneration in consultation with the Chairman of Planning Committee.

- Enforcement Notices (including requisitions for information, stop and temporary stop notices), and Notices under Section 215 of the Town and Country Planning Act 1990 (as amended) relating to untidy land may be served by an Authorised Officer and the matter pursued through to prosecution at magistrates court when ~~consultation~~ **notification** has first taken place with the Ward Member(s) **where possible or it has been agreed with Chair of Planning Committee where it has not been possible to do this.**

**7. Local Members can request that planning applications/functions be determined by Planning Committee rather than the Officers (this being known as a 'referral' request) acting under delegated powers in the following circumstances:**

- ~~A) Local Members may request that a planning application in their ward be referred to committee rather than being determined by officers acting under delegated powers provided that:-~~
- ~~• 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.~~
- ~~B) A Member in a ward immediately adjoining the ward in which the application is situated may request that an application be referred to committee rather than being determined by officers acting under delegated powers provided that:-~~
- ~~• 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 member having regard to the impact of the proposed development on their ward.~~
  - ~~• The relevant ward member(s) has/have been notified prior to the referral request being made.~~
- ~~C) A Member may request that any application be referred to committee rather than being determined by officers acting under delegated powers where, in their opinion, the application will have a material impact on the whole or part of their ward provided that:-~~
- ~~• 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 including a requirement to demonstrate how it is likely to materially impact on the whole or part of the ward area of the member making the referral request.~~
  - ~~• The recommendation of officers is different to the opinion of the Member having regard to the impact of the proposed development on their ward and/or the District as a whole or part, having regard to the nature of the development or for the reason that the application will set a precedent for the whole or part of the District.~~
  - ~~• The relevant ward member(s) has/have been notified prior to the referral request.~~
  - ~~• The Group Leader of the relevant group of the Member making the referral request has agreed to the referral.~~

~~All requests for matters to be referred to committee as set out in A, B and C above shall be determined at the discretion of the Authorised Officer in consultation with the Business Manager – Development Control and the Chairman and Vice Chairman of the Planning Committee.~~

- The Member discusses the application with the Authorised Officer (or case officer) and 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 and the Authorised Officer, Chair and Vice Chair agree that it raises material planning considerations that warrant debate by the Committee;
- The recommendation of officers is different to the opinion of the Member having made the referral request having regard to the interests of their ward which must be specified.

### Caveats

- A) Where a referral is made by a Member of an adjacent ward immediately adjoining the ward in which the application is situated, the relevant ward member(s) has/have been notified prior to the referral request being made.
- B) Where an application is referred by a Member who's ward is not either within or immediately adjacent to the application site, the referring Member must set out how:
  - A) in their opinion the application would have a material impact on the whole or part of their ward (or the district as a whole or part) having regard to the nature of the development, or
  - B) for the reason that the application will set a precedent for the whole or part of the District; and
  - C) the relevant ward member(s) has/have been notified prior to the referral request and the Group Leader of the relevant group of the Member making the referral request has agreed to the referral.

5.

The "Authorised Officer(s)" for the purposes of this part of the Constitution shall be the Chief Officer whose remit for the time being includes responsibility for planning, the relevant Business Manager with responsibility for the discharge of the development **management control** function or an Officer authorised in writing by them to act on their behalf.

### **Membership**

15 Members. (A link to the current membership of the committee can be found on the Constitution home page)."

### **RECOMMENDATION**

**That Planning Committee accepts the changes to the Scheme of Delegation as detailed above and that matter be referred to the Councillors Commission for further consideration.**

### Background Papers

See separate review report that accompanied this.

For further information please contact Clare Walker on Extension 5834 or [planning@nsdc.info](mailto:planning@nsdc.info)

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