

Planning and Highways Regulatory Committee

Constitution: Scheme of Delegation Planning Applications

10 December 2018

Report of the Planning Manager

PURPOSE OF REPORT

To enable the Committee to consider a change to its delegations to officers regarding referral of planning applications to the Committee by Councillors.

This report is public

RECOMMENDATIONS

- (1) That the Committee considers amending its delegations to officers as set out in paragraph 4.3 of the report.**
- (2) That, if the Committee agrees any amendment, the Monitoring Officer be requested to prepare a report to Council seeking approval to accept a change to the Scheme of Delegation in the Council's Constitution.**

1.0 Introduction

- 1.1 The Council's Constitution sets of the Scheme of Delegation for the determination of planning applications. It delegates authority for the Chief Officer (Regeneration and Planning)¹ and any other officer designated by them to make planning decisions except in the following categories:

- i. Applications in the major category which are recommended for approval and are the subject of any objections;*
- ii. Applications recommended for approval which are departures from the Development Plan;*
- iii. Applications made by the City Council or major applications made by the County Council;*
- iv. Applications by Members or officers of the Council and other parties where considerations of probity indicate that a Committee decision is required;*
- v. Any applications which the Chief Officer (Regeneration and Planning)*

¹ The Chief Officer (Regeneration and Planning) post has been dis-established and all delegations currently sit with the Managers in the service. The Constitution is under review and all delegations will be redistributed to appropriate Directors/Service Heads once the new structure is in situ.

considers should be determined by the Committee; or

vi. Any application which a Member of the Council asks to be referred to the Committee.

- 1.2 It is only the last bullet point, which allows Elected Members to request that any planning application is referred to the Planning and Highways Regulatory Committee, which is the subject of this report.
- 1.3 This report was first presented to the Planning and Highways Regulatory Committee at its November Meeting, and Officers have noted the comments made by Members and have made some amendments to the proposed revisions. In particular, the revisions extend the period as suggested from 14 days to 21 days; remove the reference to Ward Councillors; and they have clarified the protocol regarding Councillors (where they are also serving Members of the Planning and Highways Regulatory Committee) speaking on the item that they have referred.

2.0 Current System and Impacts

- 2.1 The ability to refer planning applications is an important part of the local planning system, and it is clear that it is an important part of local democracy and should be maintained. However, the currently unrestricted nature of the referral system is creating effects that are contrary to Paragraph 47 of the National Planning Policy Framework, which requires decisions on planning applications to be made as quickly as possible and within statutory timescales.
- 2.2 Currently, Member requests for a referral to the Planning and Highways Regulatory Committee can be received at any time in the planning process. This often has an impact on the timescale for decision-making, especially given the Monthly Committee cycles. Failing to determine a planning application within the timescale puts the Council at risk of not meeting Government's targets, which in turn can result in the Council being formally designated as a poorly performing authority. The resultant impacts can be financial (loss of planning application fees) and democratic (loss of decision-making powers), if Government were to decide to intervene.
- 2.3 Under the current scheme any Member can make a request to refer an application, although it is often the Ward Councillor.
- 2.4 Unfortunately, some applicants and agents have started to tactically contact Elected Members when it becomes apparent (usually later in the process) that a planning application is unlikely to be supported by Officers, in the hope that the Planning and Highways Regulatory Committee may come to a different decision. This was never the intent behind the Member referral system. The system exists to allow Members to take a balanced view as to what is the appropriate decision level of an individual planning application, rather than act as an informal lobbying system for Member support. The current system could be seen as encouraging Committee Members to pre-determine their support or objection for individual planning applications. This is a risk to the Council. To address the risk, officers recommend that the scheme be revised as detailed in 4.0 overleaf.

3.0 Comparison with Other Local Authorities

- 3.1 The Regeneration and Planning Service has contacted other local authorities in Lancashire to assess how the Councillor Referral system is managed. That comparison has revealed that Lancaster's current arrangements for referral lack structure.
- 3.2 Eleven of the Lancashire authorities responded to our request to provide information regarding their own Councillor Referral systems. All of the responding authorities specify a timescale for the submission of a Councillor Referral, ranging from 10 days to 21 days from publication of the proposal on the Weekly List.
- 3.3 Most responding authorities (seven) require referral requests to be made by the Ward Councillor only. Two authorities require 3 signatories. Six of the authorities have also introduced a system where referral requests can be turned down (in some of those cases, requests are assessed by either the Chair of Planning Committee; or by Officers; or by a group incorporating Chair, Vice-Chair and Opposition Spokesperson).
- 3.4 Several authorities required requests to be made on a requisite form (for clear and consistent auditing purposes) and some stated that the referral request could only be considered on an initial application (not a re-submission - an application submitted within 12 months of a refusal or withdrawal of an application with the same or similar description, unless the initial application was referred to Committee within its 21 day period before it was withdrawn).

4.0 Proposed Revisions

- 4.1 Officers have considered the benchmarking exercise with Lancashire authorities and have noted the comments from November's Planning and Highways Regulatory Committee. It is clear that there is a need for Lancaster to introduce a more structured timescale for referral requests to be made. The unrestricted system that operates at present is the only one amongst the responding Lancashire authorities, and it hinders timely decision-making and also provides no certainty (regarding timeliness of decision) for applicants/developers. It is also clear that there should be an auditable trail of the receipt of the request. Whilst Officers maintain that it would be appropriate for the request to come from a Ward Councillor, it was apparent at November's meeting that there was little Member support for such a requirement.
- 4.2 Other arrangements that are used by some of the responding authorities, such as requiring additional signatures before a referral can be considered; or introducing a system where referral requests can be refused; are not considered appropriate at Lancaster and do **not** form part of the proposal described below.
- 4.3 Therefore the proposal is solely to amend point (vi) in the current Scheme of Delegation to read as follows:

(vi) Any application which a Member of the Council asks to be referred to the Committee. This request must be made to the Case Officer within 21 days of the application appearing on the Weekly List of Applications; it must be submitted on the requisite form (which can be emailed); and the request cannot be made on a resubmitted application.

NB: In respect of (vi) the Councillor submitting the request, where that Councillor is also a Member of the Planning and Highways Regulatory Committee, that Member would be expected to register to speak at the Planning and Highways Regulatory Committee Meeting. In those circumstances, the Councillor could either choose to send a Substitute Member to take their place on the Committee for the duration of the Committee Meeting; or they could alternatively choose to register to speak as a Councillor on that single item, in the knowledge that (as a speaker) they could not participate in debate or voting on that particular item. The Councillor would, however, be permitted to return to the Committee benches to be able to participate in debate and vote on other items on the Committee agenda.

- 4.4 These amendments are considered to aid the timely delivery of planning application decisions in line with national planning policy. They also provide additional protection to Members from accusations of pre-determination, whilst still protecting their democratic right to refer any planning application to Committee where they believe that there is a legitimate and valid planning² reason for doing so.

5.0 Options and Options Analysis (including risk assessment)

	Option 1: Not to revise the Scheme	Option 2: To revise the Scheme with wording as set out in para 4.1	Option 3: To revise the Scheme with other wording
Advantages	None identified. The risks outweigh any advantages of leaving the system as it stands.	Addresses any risk that Committee Members could be lobbied and put in a position where there could be allegations of 'pre-determination'. Will also help reduce delays in determining applications to meet Government targets for performance.	Would depend on the wording proposed.
Disadvantages	Leaves the Council and Committee Members open to the risks and performance issues described in the report.	None identified. Although the current scheme gives Members greater freedom to refer applications, the risks to the Council outweigh those freedoms.	The Scheme of Delegation is part of the Council's Constitution. If other wording is suggested by the Committee, the Monitoring Officer will need to be consulted.

² Advice on valid planning considerations can be found on the Council's website:
<http://www.lancaster.gov.uk/planning/comment-on-planning-applications-chapters?chapter=2>

			The Monitoring Officer has already been consulted on the wording proposed in 4.1
Risks	As set out in 2.0 above. Would leave the Council at risk of allegations of 'pre-determination' in consideration applications and slow down the process of decision-making, which may affect the Council's performance to Government-set targets.	This course of action would reduce risks of both the issue of perceptions of 'pre-determination' and missing the Government's performance timescales for decision-making.	This would depend on the wording proposed, however the Monitoring Officer must make a report to Council and would set out any issues in that report.

6.0 Conclusion

- 6.1 Committee Members are asked to support the proposed change to the delegation system, having regard to the potential risks attached to continuing with the current arrangements.

CONCLUSION OF IMPACT ASSESSMENT

(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing):

None.

LEGAL IMPLICATIONS

The proposals would help reduce any risk that a Councillor could vote having pre-determined their view prior to hearing the facts and representations presented by officers and any interested parties speaking at Committee.

FINANCIAL IMPLICATIONS

None identified.

OTHER RESOURCE IMPLICATIONS, such as Human Resources, Information Services, Property, Open Spaces:

None identified.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments to make.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments to make.

BACKGROUND PAPERS

None.

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