

Review of Delegated Powers to Head of Planning Applications

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A report by Head of Planning Applications Group to the Planning Applications Committee on 18<sup>th</sup> November 2015

**Summary:** A review of delegated powers to Head of Planning Applications to reflect Government expectation for timely planning decisions to deliver sustainable development

**Recommendation:** Agree the minor revisions to the officer delegation arrangements

Local Member: N/A

### Introduction and Background

1. The current delegation arrangements for the planning application service are set out in Appendix 1 and were agreed by the Planning Applications Committee in October 2006. Since that time, there have been a number of legislative and other factors that highlight the need for a review of these delegation arrangements to ensure that decisions are made in a timely manner and remain the responsibility of the County Council as local planning authority.

### Driver for Review

2. In 2012, the then Minister for Planning Greg Clark MP introduced the National Planning Policy Framework (NPPF) including the expectation that development that is sustainable should go ahead without delay. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that applications must be determined in accordance with the development plan unless material considerations indicate otherwise and that the NPPF is a material consideration in decision making.
3. Since 2012 a number of mechanisms have been introduced by the Government in an attempt to speed up the pace of delivering development and to ensure that planning authorities are not unreasonably delaying new development. One such tool, introduced in 2014 was the possible designation of a local planning authority into special measures where it failed to determine 40% of major development applications within 13 weeks (or 16 if they were accompanied by an Environmental Impact Assessment) unless there was an agreed extension of time request between the applicant and the local planning authority. In its Autumn Statement 2014 the Government advised its intention to increase the performance threshold to 50%. This threshold was introduced via the Government Circular *Improving Planning Performance Criteria for designation* (revised 2015) July 2015.

4. As a result, the Town and Country Planning Act 1990 has been amended to introduce s62A and s62B which allow certain applications to bypass the local planning authority and to be made directly to the Secretary of State for Communities and Local Government if the local planning authority has been designated in 'special measures'. A further assessment of performance for designation is the extent to which decisions are overturned at appeal. This is seen as an indicator of the quality of decisions taken by a local planning authority.
5. The performance threshold includes all mineral and waste management development. At this time it does not cover the County Council's community development. Data is returned on a quarterly basis and published by the Department of Communities and Local Government (DCLG). There is a rolling 2 year assessment period. Currently 8 district councils and 7 local planning authorities determining mineral and waste applications are at risk of designation at the end of the year. A further 9 are to avoid designation on the basis that, whilst not meeting the performance threshold, they have determined less than 3 major development proposals during the 2 year assessment period.
6. Recent changes in legislation also provide in some circumstances where decisions are not timely made for deemed consent in the discharge of details pursuant to condition and for the return of the planning fee.
7. Finally this review of delegation arrangements would help to speed up decision making, future proof against minor legislative changes and reduce the amount of officer time taken in drafting committee reports.

### **Proposed Changes to Officer Delegation**

8. The table in Appendix 1 sets out the current delegations and the proposed changes, together with their rationale. Appendix 2 shows how the delegation document would look if all the changes are accepted by the Committee.
9. The key change being proposed would allow a delegated decision to be taken to refuse planning permission or to not approve details pursuant to a condition where an applicant fails to agree an extension of time with the planning authority. Whilst the County Council's performance is currently well above the special measures threshold, there is the possibility of an applicant failing to agree the necessary extension of time request to enable issues to be addressed during the planning process. Due to the lead in time for publishing committee reports it might not be possible to bring the application or details to Committee before the performance target date or the expiry of any agreed extension of time period. In

those circumstances, this failure to meet the performance target is recorded in the quarterly statistical return to DCLG and could potentially lead to the County Council being placed in special measures as a planning authority for mineral and waste management development.

10. DCLG assesses performance on the date of decision rather than a resolution to grant permission by this Committee. I therefore propose to include in the revised delegation, the option to refuse proposals where there is a resolution to grant permission subject to the completion of a legal agreement and where an applicant has failed to complete that legal agreement within 6 months of the Committee resolution being made.
  
11. In circumstances where I would wish to use the revised delegated power to refuse I propose that officers consult with the Chairman, Vice Chairman and Lead Spokesperson for each political party prior to a decision being taken. I recommend a consultation period of 2 working days.
  
12. Minor revision is also proposed to clarify that a delegated decision can be taken where material planning considerations are received in respect of a planning proposal, but are not considered material objections for the proposal before the planning authority. This would reduce delays in determining planning applications and avoid doubt over when it is necessary to report certain applications (including details submitted under condition) to the Planning Applications Committee, particularly when representations are received where reasons for objection have not been given or where those reasons given are not relevant in a particular case.

### **Recommendation**

13. I RECOMMEND that Members AGREE the revised officer delegation as set out in Appendix 2.

Sharon Thompson
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### **Background Documents:-**

Government Autumn Statement 2014  
Circular Improving Planning Performance Criteria for designation (revised 2015)  
July 2015.  
Town and Country Planning Act 1990 and Fee Regulations  
Planning Application Committee Papers October 2006

## Current and Proposed Delegation Arrangements

Delegation arrangements agreed by the former Planning Applications Committee at its meeting on the 10 October 2006.	Proposed Delegation Arrangements
<b><u>Decisions to be Taken only by the Planning Applications Committee</u></b>	
<p>1. The determination of any application not delegated to officers as set out below or which relate to land or buildings managed by the Managing Director of Environment Planning and Regeneration Directorate or to which there are material planning objections.</p>	<p>1. The determination of any application not delegated to officers as set out below or which relate to land or buildings managed by the Director of Environment Planning and Enforcement or to which there are material planning objections - except where representations are received that could otherwise be considered material planning objections but, in the opinion of the Head of Planning Applications, are not relevant in a particular case.</p> <p><b>Reasons for change:</b></p> <p>(i) <i>To reflect organisational changes to the management structure and reporting lines of the County Council.</i></p> <p>(ii) <i>To reduce delays in determining planning applications (including details submitted under condition) and for avoidance of doubt over when it is necessary to report certain applications to the Planning Applications Committee, particularly when representations are received and the reasons for objection have either not been given or are not relevant in a particular case.</i></p>
<p>2. Any actions which might give rise to liability to pay compensation.</p>	<p>2. Any actions which might give rise to liability to pay compensation.</p> <p><b>No change proposed</b></p>
<p>3. Responses to planning circulars or Government advice of particular relevance to the operation of the Development Control service.</p>	<p>3. Responses to Government advice or consultations of particular relevance to the operation of the Development Management service by the Planning Applications Committee.</p> <p><b>Reasons for change:</b> <i>To reflect current circumstances and terminology, and that responses to Government consultations relating to planning policy matters fall to the Cabinet Member to agree.</i></p>

4. Any matter referred to the Committee by officers or at the request of the Committee Chairman.	4. Any matter referred to the Committee by officers or at the request of the Committee Chairman.  <b>No change proposed</b>
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**Decisions normally to be taken by Head of Planning Applications Group**

1. To determine any application for which there has been no relevant planning objection raised by consultees or as a result of advertising;	1. To determine any application (including details submitted under condition and non-material amendments) for which there has been no relevant planning objection raised by consultees or as a result of publicity, or where representations are received that could otherwise be considered material planning objections but in the opinion of the Head of Planning Applications are not relevant in a particular case.  <i>Reasons for change: To reduce delays in determining planning applications and for avoidance of doubt over when it is necessary to report certain applications (including details submitted under condition) to the Planning Applications Committee particularly when representations are received and the reasons for objection have either not been given or are not relevant in a particular case.</i>
2. To determine an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD)	2. To determine an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD)  <b>No change proposed</b>
3. To determine a screening or scoping opinion pursuant to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.	3. To determine a screening* or scoping opinion pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended) or any subsequent order amending, revoking and re-enacting these regulations.  <i>Reasons for change: Reference to legislation updated.</i>

*\*Local Planning Authorities are required under the Regulations to adopt a Screening Opinion within 3 weeks of receipt of the request, unless a longer period is agreed in writing, for example, if additional information is required.*

<p>4. To determine an Appropriate Assessment application pursuant to the Conservation (Natural Habitats) Regulations 1994 (the Habitats Regulations), where Natural England (formally English Nature) has advised the County Council that it is satisfied that the proposal will not affect the conservation objectives of the designated site or that the mitigation measures proposed are acceptable.</p>	<p>4. To determine an Appropriate Assessment application pursuant to The Conservation of Habitats and Species Regulations 2010 (as amended) or any subsequent order amending, revoking and re-enacting these regulations, where Natural England has advised the County Council that it is satisfied that the proposal will not affect the conservation objectives of the designated site or that the mitigation measures proposed are acceptable.</p> <p><b>Reasons for change:</b> <i>Reference to legislation updated.</i></p>
<p>5. To refuse applications (including details submitted under conditions) where such applications meet any of the following criteria:</p> <ul style="list-style-type: none"> <li>• The proposal does not accord with the Development Plan and there are no overriding material reasons for granting approval;</li> <li>• The application is retrospective and is aimed at rectifying a breach of planning control against which Enforcement proceedings including Court prosecutions have already been instigated;</li> <li>• The application is a repeat application within 12 months of a previous refusal or withdrawal and does not address the grounds of refusal or concerns raised by the earlier proposal.</li> </ul> <p>Such decisions in relation to 5 above will only be issued following consultation with the Chairman and Party Group Spokesmen unless reasons of urgency make this impracticable.</p>	<p>5. To refuse applications and to not approve details submitted under conditions where such submissions meet any of the following criteria:</p> <ul style="list-style-type: none"> <li>• The proposal does not accord with the Development Plan and there are no overriding material reasons for granting permission or approving the details;</li> <li>• Insufficient detail or information has been submitted to: <ul style="list-style-type: none"> <li>(i) enable proper consideration of an application for planning permission; or</li> <li>(ii) satisfy the terms of a condition or conditions, in the case of an application to discharge a condition or conditions; or</li> <li>(iii) enable technical issues raised by consultees to be resolved, either to determine an application for permission or to discharge a condition or conditions;</li> </ul> </li> <li>• The applicant has not agreed a reasonable extension of time to otherwise allow, within the required timescale for: <ul style="list-style-type: none"> <li>(i) proper consideration of any further information submitted; or</li> <li>(ii) completion of a legal agreement; or</li> </ul> </li> </ul>

	<p>(iii) resolution of any other outstanding matters;</p> <ul style="list-style-type: none"> <li>• The applicant has failed to complete a legal agreement upon which a resolution by the Planning Applications Committee to grant planning permission is dependent within 6 months of such a resolution being made;</li> <li>• The application is retrospective and is aimed at rectifying a breach of planning control against which Enforcement proceedings including Court prosecutions have already been instigated;</li> <li>• The application is a repeat application within 12 months of a previous refusal or withdrawal and does not address the grounds of refusal or concerns raised by the earlier proposal.</li> </ul> <p>Such decisions in relation to 5 above will only be issued following consultation with the Chairman, Vice Chairman and Lead Spokesperson for each political party prior to a decision being taken unless reasons of urgency make this impracticable. The consultation period shall usually be 2 working days.</p> <p><b><i>Reasons for change:</i></b> <i>To address changes to planning legislation and practice arising from the Government's objective of reducing 'red tape' in order to speed up the planning process and to reduce delays in reaching timely planning decisions. These include circumstances where an applicant has refused to agree an extension of time and the timescale for determination cannot be met because there are matters that still need to be resolved and failure to make a determination would result in the planning application fee having to be returned or the deemed discharge of planning conditions. It also places the Local Planning Authority at risk of special measures. In such cases an applicant can bypass the Local Planning Authority and submit its application direct to the Planning Inspectorate.</i></p>
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**Proposed Delegation Arrangements**

<b>Decisions to be taken by the Planning Applications Committee</b>
1. The determination of any application not delegated to officers as set out below or which relate to land or buildings managed by the Director of Environment Planning and Enforcement or to which there are material planning objections - except where representations are received that could otherwise be considered material planning objections but in the opinion of the Head of Planning Applications are not relevant in a particular case.
2. Any actions which might give rise to liability to pay compensation.
3. Responses to Government advice or consultations of particular relevance to the operation of the Development Management service by the Planning Applications Committee.
4. Any matter referred to the Committee by officers or at the request of the Committee Chairman.

<b>Decisions normally to be taken by Head of Planning Applications Group</b>
1. To determine any application (including details submitted under condition and non-material amendments) for which there has been no relevant planning objection raised by consultees or as a result of publicity, or where representations are received that could otherwise be considered material planning objections but in the opinion of the Head of Planning Applications are not relevant in a particular case.
2. To determine an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD)
3. To determine a screening* or scoping opinion pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended) or any subsequent order amending, revoking and re-enacting these regulations.
<i>*Local Planning Authorities are required under the Regulations to adopt a Screening Opinion within 3 weeks of receipt of the request, unless a longer period is agreed in writing, for example, if additional information is required.</i>
4. To determine an Appropriate Assessment application pursuant to The Conservation of Habitats and Species Regulations 2010 (as amended) or any subsequent order amending, revoking and re-enacting these regulations, where Natural England has advised the County Council that it is satisfied that the proposal will not affect the conservation objectives of the designated site or that the mitigation measures proposed are acceptable.



5. To refuse applications and to not approve details submitted under conditions where such submissions meet any of the following criteria:

- The proposal does not accord with the Development Plan and there are no overriding material reasons for granting permission or approving the details;
- Insufficient detail or information has been submitted to:
  - (i) enable proper consideration of an application for planning permission; or
  - (ii) satisfy the terms of a condition or conditions, in the case of an application to discharge a condition or conditions; or
  - (iii) enable technical issues raised by consultees to be resolved, either to determine an application for permission or to discharge a condition or conditions;
- The applicant has not agreed a reasonable extension of time to otherwise allow, within the required timescale:
  - (i) proper consideration of any further information submitted; or
  - (ii) completion of a legal agreement; or
  - (iii) resolution of any other outstanding matters;
- The applicant has failed to complete a legal agreement upon which a resolution by the Planning Applications Committee to grant planning permission is dependent within 6 months of such a resolution being made;
- The application is retrospective and is aimed at rectifying a breach of planning control against which Enforcement proceedings including Court prosecutions have already been instigated;
- The application is a repeat application within 12 months of a previous refusal or withdrawal and does not address the grounds of refusal or concerns raised by the earlier proposal.

Such decisions in relation to 5 above will only be issued following consultation with the Chairman, Vice Chairman and Lead Spokesperson for each political party prior to a decision being taken unless reasons of urgency make this impracticable. The consultation period shall usually be 2 working days.