

Cherwell District Council

Planning Committee

19 February 2015

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| <p>Proposed changes to the scheme of delegation to the Head of Development Management</p> |
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Report of Head of Development Management

This report is public

Purpose of report

To seek the agreement of the Planning Committee to proposed revisions to the current scheme of delegation to the Head of Development Management as set out in the council's Constitution.

1.0 Recommendations

The meeting is recommended:

- 1.1 To agree the revisions proposed in the Report.

2.0 Introduction

- 2.1 The current scheme of delegation was introduced in October 2013 and has been operating now for 17 months.
- 2.2 Officers (and officers of South Northamptonshire Council) have undertaken a review of the current scheme to consider whether it is working effectively and to consider if there would be any benefits from revising the scheme.
- 2.3 The aim of the review was to try and reduce the numbers of applications determined by the Committee in order to enable it to focus on the most significant applications but without compromising quality or the council's corporate objectives.
- 2.4 The review was also intended to help expedite the progress of applications to help meet corporate targets for all types of applications and to use the department's resources as efficiently as possible, similarly without compromising quality or the council's corporate objectives. It is imperative to use the council's resources as efficiently as possible. Applications presented to the Committee for determination involve greater officer resources than delegated applications. The reports are generally more detailed and therefore take longer to prepare, there is an administration process involved with taking applications to committee that is not

necessary for delegated applications, there is preparation time for presentation to the Committee and Chairman's briefing before the meeting and there is the time spent attending the Committee itself. This time impacts not only on the speed the particular application being presented to the Committee is determined but the speed at which all other applications are also then determined.

- 2.5 In formulating the proposed changes discussions have taken place with;
- Leader of the Council; Chairman and Vice Chairman of the Planning Committee, and Lead Member for Planning
 - Head of Law and Governance
- 2.6 If the Planning Committee resolves to agree the proposed changes then the proposed revisions to the council's Constitution will be considered by Full Council.
- 2.7 A copy of the current scheme of delegation is attached as Appendix 1 to this report.
- 2.8 A copy of the proposed scheme of delegation is attached as Appendix 2 to this report.

3.0 Report Details

- 3.1 In formulating the proposed revisions the focus has been on the aim of removing certain categories of applications from the need for determination by the Committee to save council time and resources (both councillor and officer) but which at the same time will not compromise the council's decision-making process or its objectives.
- 3.2 Firstly, those applications which are currently NOT delegated and which it was considered should remain with the Committee for determination were removed from further consideration. This included;
- Applications for more than 10 dwellings (except for minor material amendments and the variations and removal of conditions)
 - Departures from the Development Plan
 - Applications called in by Councillors
 - Applications submitted by Officers of CDC with management responsibility in a personal capacity or by Officers of CDC employed in the Development Management Service
 - Applications submitted by a member of staff or Councillor of CDC acting as agent or advisor or consultant
 - Applications referred by the Head of Service.
- 3.3 The categories of applications currently delegated which warranted further investigation and consideration were therefore the following;
- Applications for new buildings where the floorspace to be created is more than 1,000 sqm
 - Applications for development on a site of over 1Ha in size

- Applications affecting the Council's own land or where the Council is the applicant (other than applications for works to trees)
- Applications submitted by Councillors of CDC (other than applications relating to works to trees)
- Consultations from neighbouring local authorities (including County Councils) that are Major applications (as defined), including the winning and working of minerals or the use of land for mineral-working deposits and waste developments (unless referral to Committee would take the Council's response outside the time period given for the response by the consulting authority)

3.4 Applications for new buildings where the floorspace to be created is more than 1,000 sqm

3.4.1 These applications are currently referred to the Committee because they are classed as 'major' applications in the Town and County Planning (Development Management Procedure) (England) Order 2010. During 2014 around fifteen applications were referred because they fell within this category. (Officer Note: some applications fall within more than one category so may be accounted for twice).

3.4.2 The possibility of revising this floorspace limit up to 5,000 sqm was considered but subsequently discounted. This was because 1,000sqm is a significant and large building and it was considered that developments on this sort of scale should be referred to the Committee for consideration, albeit that it will occasionally include large agricultural buildings which are an increasingly common feature of our landscape. Development of this scale can have significant visual and other impacts. The types of buildings range across; agricultural buildings, a care home, commercial buildings, a grain store and a training facility.

3.4.3 **It is therefore recommended that there is no change to the current scheme in this respect.**

3.5 Applications for development on a site of over 1Ha in size

3.5.1 This category accounts for the largest number of applications presented to the Committee in 2014. These applications too are currently referred to the Committee because they are classed as 'major' applications in the Town and County Planning (Development Management Procedure) (England) Order 2010.

3.5.2 During 2014, 29 applications were referred because they fell within this category. However, as noted above, some applications fall within more than one category so may be accounted for twice. This is particularly true in this case. For example, the majority of the applications for more than 10 dwellings are on a site over 1ha in area and these would still be referred to Committee as the housing number threshold would remain unchanged. From analysis of the 2014 Committee agendas it would appear that as many as 32 applications may be in this category, and capable of being removed from the need to be dealt with at Committee.

3.5.3 This category relates solely to the application site area, rather than specifically to the size of the development proposed (unlike that in 3.4 above). Therefore a large number of these applications actually propose what would ordinarily be considered

'minor' development but which by virtue of the drawing of the red application site boundary result in a referral to the Committee.

- 3.5.4 The types of applications include; hardstandings, fencing of existing pony paddocks, changes of use of land (examples include to recreational use and equestrian use), small agricultural buildings and stables, portacabins, new access roads and tracks and extensions of time.
- 3.5.5 These are generally minor, less controversial, developments yet due to the volume of applications they take up a significant amount of the Committee's time. It is not considered that delegating these types of applications would affect the quality of the decision or impact adversely on the council's corporate objectives yet it would free up a significant amount of time to allow the Committee to focus on the larger, more controversial applications where value can be more readily added.
- 3.5.6 It should also be noted that the councillor call-in procedure will be unaffected by these proposed changes, as will the opportunity for the Head of Service to refer applications to the Committee. Therefore there will always be a 'safety net' if these types of applications are not 'automatically' referred to the Committee.
- 3.5.7 **The recommendation is therefore that applications for development on a site of over 1Ha in size are no longer referred to the Committee as a matter of course but are delegated to the Head of Development Management.** With one exception; some of the applications referred for this reason were for large scale renewable energy schemes (wind farms or solar farms). **It is therefore also recommended that there is an addition to the scheme of delegation and that is applications for commercial renewable energy schemes which will NOT be delegated to the Head of Service.** This would include all free standing wind turbines and all free standing solar panels other than householder schemes.
- 3.6 Applications affecting the Council's own land or where the Council is the applicant (other than applications for works to trees)
- 3.6.1 In 2014, 11 applications within this category were determined by the Committee. Whilst it is considered appropriate in principle for applications affecting the council's land or where the council is the applicant to be considered by the Committee, there are occasions where minor applications of no contention are referred to the Committee which could be as effectively and expeditiously determined under delegated authority.
- 3.6.2 Some of the applications in this category related to applications for signs or public information boards (Members may recall dealing with applications for adverts at Pioneer Square, Bicester for example). It is not considered that applications of this type need to be referred or that such referral adds quality to the decision-making process commensurate with the time that is taken to process them in this way.
- 3.6.3 **It is therefore recommended that applications affecting the Council's own land or where the Council is the applicant will only be presented to the Committee for determination if they are NOT applications for works to trees, advertisements or for public information purposes.** In all other cases they will be determined by the Committee and will NOT be delegated.

- 3.6.4 It should also be noted that the councillor call-in procedure will be unaffected by these proposed changes, as will the opportunity for the Head of Service to refer applications to the committee. Therefore there will always be a 'safety net' if these types of applications are not 'automatically' referred to committee.
- 3.7 Applications submitted by Councillors of CDC (other than applications relating to works to trees)
- 3.7.1 Consideration was given to whether there could be changes made to the need to refer ALL of these types of applications to the Committee. Last year only a small number of such applications were referred. Many of which raised no objections by third parties.
- 3.7.2 Consideration was given to whether it would be appropriate to delegate these types of applications UNLESS they were recommended for approval and objections on planning grounds had been made. This would then still enable transparent consideration of applications in the event that objections were received.
- 3.7.3 Advice was sought from the Head of Law and Governance, and council's Monitoring Officer, on the matter and the advice was that this would be contrary to established good practice on probity and would also necessitate the need for an amendment to the Good Practice Guidance on Planning Matters.
- 3.7.4 **In light of this advice it is therefore recommended that there is no change to the current scheme in this respect.**
- 3.8 Consultations from neighbouring local authorities (including County Councils) that are Major applications (as defined), including the winning and working of minerals or the use of land for mineral-working deposits and waste developments, unless referral to Committee would take the Council's response outside the time period given for the response by the consulting authority.
- 3.8.1 In 2014 these accounted for 11 applications. Presenting these applications to the Committee can be challenging because of the timescales this council has to respond to the consultations (usually only 21 days unless exceptions can be negotiated).
- 3.8.2 They are also consultations and so the council is responding as consultee rather than having decision-making authority.
- 3.8.3 It is right that on the major applications there should be councillor involvement in the consultation process. However, it is considered that there are ways of achieving this which are preferable to referral to the Committee given the timing challenges faced by officers and concerns expressed by the Committee about the length of some meetings/agendas.
- 3.8.4 **It is therefore recommended that these types of applications/consultations should be delegated to the Head of Service SUBJECT TO the case officer liaising in advance of the decision being issued with the Chair of the Planning Committee and the relevant ward councillor(s) affected.** This would include councillors of adjoining wards where the site is outside Cherwell.

- 3.8.5 This would allow the response to be made within the timescales given, would save the Committee's time but would ensure that there was an appropriate level of councillor involvement in the response that is issued.
- 3.8.6 It should also be noted that the councillor call-in procedure will be unaffected by these proposed changes, as will the opportunity for the Head of Service to refer applications to the committee. Therefore there will always be a 'safety net' if these types of applications are not 'automatically' referred to committee where timescales allow.

4.0 Conclusion and Reasons for Recommendations

- 4.1 Officers have undertaken a review of the current scheme of delegation to consider whether it is working effectively and expeditiously and to consider if there are any benefits from revising the scheme.
- 4.2 The aim of the review was to try and reduce the numbers of applications determined by the Committee in order to enable it to focus on the most significant applications but without compromising quality or the council's corporate objectives.
- 4.3 There are applications which are currently NOT delegated and which it was considered should remain with the Committee for determination and which were removed from further consideration (see para 3.2 above)
- 4.4 The categories of applications currently delegated which warranted further investigation and consideration were applications for new buildings of over 1,000sqm, for development on a site of over 1Ha in size, applications affecting the Council's own land or where the Council is the applicant, those submitted by Councillors of CDC and consultations from neighbouring local authorities.
- 4.5 The analysis of these applications and the relevant recommendations can be found in the above report. The revised scheme of delegation proposed is attached as Appendix 2.
- 4.6 It is recommended that the revised proposed scheme of delegation as attached as Appendix 2 to this report is agreed by the Planning Committee for referral to Full Council for further consideration.
- 4.7 The revised scheme of delegation would result (using 2014 data) in a reduction of circa 42 applications being referred to the Committee overall which over 13 committee meetings is approximately 3 per committee meeting on average.
- 4.8 The proposed revisions are therefore considered to reduce the number of applications determined by the Committee to an acceptable level in order to enable it to focus on the most significant applications. However, as the report explains it will not compromise quality or the council's corporate objectives.

5.0 Consultation

Councillors Rose Stratford (Chair of Planning Committee) , Colin Clarke (Vice Chairman) , Michael Gibbard (Lead Member for Planning) and Councillor Wood

Jon Westerman; Development Services Manager

Kevin Lane: Head of Law and Governance

All consultees support the referral of this recommendation to the Planning Committee.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: Retain the current scheme of delegation and make no revisions

This option was rejected as it would not achieve the stated aims of officers and the Planning Committee to try and reduce the numbers of applications determined by the Committee in order to enable it to focus on the most significant applications but without compromising quality or the council's corporate objectives.

Option 2: Consider alternative revisions

The reasons for the revisions pursued and investigated are set out in the report. The proposed revisions and the reasons for them are also explained. The revisions put forward are considered the most appropriate to achieve the two main aims as set out above. Any fewer revisions would not have reduced applications being determined by the Committee to a level sufficient to result in a discernible difference and a saving in real terms of the Committee's time. Any more extensive revisions would have conflicted with the aim of the Committee focussing on the more significant applications and achieving corporate objectives.

7.0 Implications

Financial and Resource Implications

- 7.1 There are no financial implications arising directly from this report. The costs of processing planning applications are met from existing resources.

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Legal Implications

- 7.2 The proposed changes are considered to represent a reasonable balance between the efficient conduct of Committee meetings and the need for significant applications to be considered in a member forum. Any proposal to delegate applications submitted by Councillors or senior/development management officers would be contrary to good practice guidance on probity in planning and expose the Council to the risk of allegations of impropriety and lack of openness and transparency. I therefore strongly reiterate the advice contained in paragraph 3.7.3 above.

Comments checked by:
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8.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

The key corporate priority linked to this decision is “A District of Opportunity” and in particular, the role of the Development Management Service in the following:

- Securing employment-generating development with necessary transport / other infrastructure;
- Proactively monitoring and enforcing the implementation of new developments to ensure they comply with the relevant permission/approval;
- Meeting local performance targets in terms of speed of determination of all forms of application;

Lead Councillor

Councillor Michael Gibbard, Lead Member for Planning

Document Information

| Appendix No | Title |
|----------------------------|---|
| Appendix 1 | Current scheme of delegation to the Head of Development Management |
| Appendix 2 | Proposed scheme of delegation to the Head of Development Management |
| Background Papers | |
| None | |
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Appendix 1

Current scheme of delegation to the Head of Development Management

Planning

To determine applications for:

- Planning permission (outline and full)
- Reserved matters approval
- Extensions of time
- Listed building consent
- Conservation area consent
- Advertisement consent
- Variations/removal of conditions
- Discharge of conditions
- Minor material amendments
- Non material amendments
- Certificates of lawfulness for an existing use or development
- Certificates of lawfulness for a proposed use or development
- Certificates of appropriate alternative development
- Applications under the Hedgerow Regulations
- Works to trees protected by a Tree Preservation Order
- All forms of deemed applications (arising from enforcement action)

Apart from the following:

1. All Major applications (full and outline) except for minor material amendments and the variations and removal of conditions.

Major applications would be defined as;

- Applications for 10 or more dwellings
- Applications for new buildings where the floorspace to be created is over 1000sqm
- Any development on a site over 1ha in size

2. All recommendations to approve a significant departure from the adopted development plan or other Council approved policies and/or strategies

3. Whether an application is considered to be a 'significant' departure will be determined by the Head of Development Management (or the line manager that reports to the Head of Development Management) in consultation with the Chairman of the Planning Committee (or Vice Chairman in the Chairman's absence).

When deciding if any departure is 'significant' the criteria that will be considered will include, but not be limited to, the following;

- All relevant policies in the development plan and whether the policies are up to date
- Other CDC policies, guidance and strategies
- Government policy

- Scale and type of development
- Site history
- Whether conditions or a legal agreement could address any potential conflict

4. Applications called in by a member of the Council within 21 days of the registration of an application

- The call in request must be for material planning reasons
- The request must be made within 21 calendar days of the registration of the application as valid (the day after registration to count as day one)
- The request must be made in writing by letter or email
- The request must be sent to the Head of Development Management (or the line manager that is responsible for Development Management and reports to the Head of Development Management) and the Chairman of the Planning Committee
- The request MUST contain all the relevant information

On receipt of the call-in request the Head of Development Management (or the line manager that reports to the Head of Development Management and is responsible for Development Management) will either agree, or refuse, the request in consultation with the Chairman of the Planning Committee (Vice Chairman in the Chairman's absence). The criteria for deciding whether to allow a call-in request will include, but not be limited to,

- whether material planning reasons have been supplied,
- views of parish or town council,
- level of public interest,
- scale and type of development,
- site history,
- statutory time frame for decision,
- relevant development plan policies, council guidance and strategies
- whether the committee could legitimately reach another conclusion than the one reached by officers and/or the extent to which they are considered to have the potential to "add value" to the final scheme.

The councillor who called in the application is encouraged to attend, or send another nominated member to speak

5. Applications submitted by;

- Any Officers of CDC with management responsibility in a personal capacity
- Officers employed in the Development Management Service
- Councillors of CDC (other than applications relating to works to trees)
- A member of staff or Councillor of CDC acting as agent or advisor or consultant

where in any case the Council determining the application is the Council of which the relevant person is an officer or member

6. Applications affecting the Council's own land or where the Council is the applicant (other than applications for works to trees)

7. Any application which the Head of Development Management considers should be referred to Planning Committee in consultation with the Chairman (Vice Chairman in the Chairman's absence) because of its controversy or significance.

When deciding if an application is controversial or significant, the criteria that will be considered will include, but not be limited to, the following;

- Consultation responses
- Representations
- Level of public interest
- Relevant development plan and other Council policies, guidance and strategies
- Government policy
- Scale and type of development
- Site history
- Whether Planning Committee could realistically and legitimately take a different view from the officer's recommendation and/or the extent to which they are considered to have the potential to 'add value' to the final scheme.

To determine the following;

- All notifications, determinations and prior approval applications (which include those proposals relating to agricultural developments, telecommunications, demolition of buildings, electricity board works and the removal of public pay phones)
- All requests for screening opinions
- All requests for scoping opinions
- All requests and applications for revisions to s.106 agreements
- All consultations from the County Council and neighbouring local authorities that are not Major applications
- Works to trees in conservation area
- Applications for Hazardous Substances Consent

Apart from the following:

All consultations from neighbouring local authorities (including County Councils) that are Major applications (as defined above), including the winning and working of minerals or the use of land for mineral-working deposits and waste developments, unless referral to Committee would take the Council's response outside the time period given for the response by the consulting authority.

Appendix 2

Proposed scheme of delegation to the Head of Development Management

Planning

To determine applications for:

- Planning permission (outline and full)
- Reserved matters approval
- Extensions of time
- Listed building consent
- Conservation area consent
- Advertisement consent
- Variations/removal of conditions
- Discharge of conditions
- Minor material amendments
- Non material amendments
- Certificates of lawfulness for an existing use or development
- Certificates of lawfulness for a proposed use or development
- Certificates of appropriate alternative development
- Applications under the Hedgerow Regulations
- Works to trees protected by a Tree Preservation Order
- All forms of deemed applications (arising from enforcement action)

Apart from the following:

1. All Major applications (full and outline) except for minor material amendments and the variations and removal of conditions.

Major applications would be defined as;

- Applications for 10 or more dwellings
- Applications for new buildings where the floorspace to be created is over 1000sqm
- Applications for commercial (non-householder) renewable energy schemes. Including single wind turbines.

2. All recommendations to approve a significant departure from the adopted development plan or other Council approved policies and/or strategies

3. Whether an application is considered to be a 'significant' departure will be determined by the Head of Development Management (or the line manager that reports to the Head of Development Management) in consultation with the Chairman of the Planning Committee (or Vice Chairman in the Chairman's absence).

When deciding if any departure is 'significant' the criteria that will be considered will include, but not be limited to, the following;

- All relevant policies in the development plan and whether the policies are up to date
- Other CDC policies, guidance and strategies

- Government policy
- Scale and type of development
- Site history
- Whether conditions or a legal agreement could address any potential conflict

4. Applications called in by a member of the Council within 21 days of the registration of an application

- The call in request must be for material planning reasons
- The request must be made within 21 calendar days of the registration of the application as valid (the day after registration to count as day one)
- The request must be made in writing by letter or email
- The request must be sent to the Head of Development Management (or the line manager that is responsible for Development Management and reports to the Head of Development Management) and the Chairman of the Planning Committee
- The request MUST contain all the relevant information

On receipt of the call-in request the Head of Development Management (or the line manager that reports to the Head of Development Management and is responsible for Development Management) will either agree, or refuse, the request in consultation with the Chairman of the Planning Committee (Vice Chairman in the Chairman's absence). The criteria for deciding whether to allow a call-in request will include, but not be limited to,

- whether material planning reasons have been supplied,
- views of parish or town council,
- level of public interest,
- scale and type of development,
- site history,
- statutory time frame for decision,
- relevant development plan policies, council guidance and strategies
- whether the committee could legitimately reach another conclusion than the one reached by officers and/or the extent to which they are considered to have the potential to "add value" to the final scheme.

The councillor who called in the application is encouraged to attend, or send another nominated member to speak

5. Applications submitted by;

- Any Officers of CDC with management responsibility in a personal capacity
- Officers employed in the Development Management Service
- Councillors of CDC (other than applications relating to works to trees)
- A member of staff or Councillor of CDC acting as agent or advisor or consultant

where in any case the Council determining the application is the Council of which the relevant person is an officer or member

6. Applications affecting the Council's own land or where the Council is the applicant (other than applications for works to trees, advertisements or for public information purposes)

7. Any application which the Head of Development Management considers should be referred to Planning Committee in consultation with the Chairman (Vice Chairman in the Chairman's absence) because of its controversy or significance.

When deciding if an application is controversial or significant, the criteria that will be considered will include, but not be limited to, the following;

- Consultation responses
- Representations
- Level of public interest
- Relevant development plan and other Council policies, guidance and strategies
- Government policy
- Scale and type of development
- Site history
- Whether Planning Committee could realistically and legitimately take a different view from the officer's recommendation and/or the extent to which they are considered to have the potential to 'add value' to the final scheme.

To determine the following;

- All notifications, determinations and prior approval applications (which include those proposals relating to agricultural developments, telecommunications, demolition of buildings, electricity board works and the removal of public pay phones)
- All requests for screening opinions
- All requests for scoping opinions
- All requests and applications for revisions to s.106 agreements
- All consultations from the County Council and neighbouring local authorities that are not Major applications
- Works to trees in conservation area
- Applications for Hazardous Substances Consent
- All consultations from neighbouring local authorities (including County Councils) that are Major applications SUBJECT TO the relevant case officer consulting with the Chairman of Planning Committee (or the Vice-Chairman in his absence) and relevant Ward Councillor(s) (including adjoining Wards as considered necessary) in advance of a response being issued. The case officer will notify the Chairman of Planning Committee and relevant Ward Members of the date of the Committee meeting at which the adjoining authority/county council will be considering the application.