

REPORT TO CABINET

Open		Would any decisions proposed :			
Any especially affected Wards	Operational	Be entirely within Cabinet's powers to decide		NO	
		Need to be recommendations to Council		YES	
		Is it a Key Decision		NO	
Lead Member: Cllr R Blunt E-mail: cllr.richard.blunt@west-norfolk.gov.uk		Other Cabinet Members consulted:			
		Other Members consulted: Cllr Spikings as Chairman of Planning Committee			
Lead Officer: Stuart Ashworth E-mail: stuart.ashworth@west-norfolk.gov.uk Direct Dial:		Other Officers consulted: Geoff Hall, Hannah Wood-Handy. Alexa Baker			
Financial Implications NO	Policy/Personnel Implications NO	Statutory /Legal Implications YES	Equality Impact Assessment NO	Environmental Considerations NO	Risk Management Implications YES

Date of meeting: 21 June 2022

Planning scheme of delegation and sifting panel

Summary

It is proposed to make amendments to the current planning scheme of delegation. The scheme of delegation includes the councillor call-in and sifting panel process. It is proposed to amend the scheme of delegation so councillors can have extra time to call-in an application to committee, and parish councils can also have their comments considered by sifting panel, in relation to reconsultation of amended/revised development proposals.

Other changes are also proposed, to bring the scheme more up to date, to clarify particular issues and to bring it into line with other policy/guidance.

The sifting panel is proposed to remain, as a key part of the process.

Recommendation

- 1) That the scheme of delegation be amended as set out in the report, and as attached to this report.
- 2) That the operation of the scheme be reviewed in summer 2023, to assess the impact of the changes.

Reason for Decision

To ensure the scheme of delegation provides that balance between taking planning decisions under officer delegated powers and taking decisions at planning committee,

and that is allows for an efficient and effective service for all customers.

1.0 Background

- 1.1 The planning scheme of delegation (PSoD) was last reviewed by Cabinet on 28 November 2017. It needs to be reviewed again to ensure it continues to be up to date and in conformity with legislation.
- 1.2 Each council will have their own planning scheme of delegation (PSoD). The PSoD allows the authority to determine applications without every one having to go to planning committee. Last year (1/4/21- 31/3/22) the council determined 1719 planning applications, of which 106 were dealt with by Committee. If all 1719 went to committee the system would clearly grind to a halt, stifling development and preventing an efficient service for applicants and the general public. The PSoD is therefore important to ensure that applications are dealt with in the most effective manner, balanced against the need for the planning committee to determine the most contentious and often finely balanced applications.

2.0 Proposed changes to the scheme of delegation

Councillor call-in rights

- 2.1 At present, borough councillors can call-in a planning application 28 days from its publication on the weekly list of applications. The weekly list is published every Friday.
- 2.2 One aspect that has come to light on a number of occasions is that it is perceived to be unfair that councillors cannot call-in an application when amendments have been made to an application which they wish to comment on. It is relatively common for changes to be made during the course of an application, and for amended plans to be received.
- 2.3 There is no legal requirement to re-consult when amendments are made to a scheme as it progresses (apart from development subject to an Environmental Impact Assessment). The requirements to consult are all at the start of the process. Not all amendments to applications are consulted upon, for example a slight change to a window design or alignment or other relatively marginal changes. However, where it is considered that those changes are more than minor, then officers will re-consult parish councils and any relevant consultee. For example significant changes to access arrangements will mean reconsultation with NCC highways, as well as the parish council. It is accepted that what constitutes a more than minor, or material change, and therefore what is consulted upon, is a matter of judgement. Some further explanation of this has been provided in the notes to the scheme, although it is difficult to be precise with this, given the wide variety of potential changes that can be made to schemes.

- 2.4 Given the above it is proposed to re-consult ward councillors at the same time as a parish council, and that ward councillors have a further 21 days from the date of that reconsultation to call-in a proposal.
- 2.5 It should be highlighted that this could have the potential to slow the application system down at a time when the service is trying to deal with an increase in application numbers. National performance targets for dealing with applications may be adversely affected, as the above timescales mean an application will inevitably go over the 8 week target. It will therefore rely on the goodwill of the applicant/agent to agree an extension of time. If they do not agree to an extension, then that will go as an application out of time, and in theory they could also appeal non-determination, taking the decision away from the council, although realistically that is unlikely.

Parish councils

- 2.6 At the moment parish councils can technically only have an application taken to sifting panel at the start of the process. As with councillor call-in rights it is proposed that parish councils will benefit from a further 21 day period from the date of reconsultation on an amended scheme, where if they disagree with an officer recommendation, that triggers it going to sifting panel. The remaining caveats with the parish councils, such as giving material planning reasons will remain.
- 2.7 Should these changes be agreed, officers will write to parish councils informing them of the changes to call-in rights for both councillors and them. It is also proposed to run a series of parish council update sessions in the autumn.

Other changes to the scheme of delegation

- 2.8 There has been confusion over whether or not councillors can call-in a prior notification, or tree-works application. They cannot be called-in because they are time-limited in legislation, so that they are permitted once certain timescales expire. Prior notification applications are permitted development, subject to a shortened processes, with limited rights to object to, for example agricultural buildings, telecommunication masts, some changes of use etc. The timescales for applications for works to a tree covered by a TPO is 8 weeks, and 6 weeks for a tree in a conservation area.
- 2.9 This means that if they were called-in, on most occasions they would automatically be approved because the relevant timescales would expire. The fact they cannot be called-in is further clarified in the scheme of delegation, through specifying the application types councillors can call-in. Essentially these are all planning applications (including reserved matters), listed building applications, and applications for advertisement consent.
- 2.10 The parish council process for having applications looked at by councillors (through sifting panel initially) extends to major and minor

developments only. It does not include householder applications, that is extensions and other works to, and within, the curtilage of a dwelling house. There is an anomaly where if an amendment to a householder takes place under a variation of condition (S.73) application, it is treated as a minor application. As these are amendments to householder applications, they should be treated as householder applications as well. That said, the call-in rights will also apply to these applications, so that safeguard is still in place.

- 2.11 Other points of clarification include that a parish council will need to raise material planning considerations relevant to that development, and that the right to have an application for the council's own minor and other developments go to committee after an objection, has a time limit inserted.
- 2.12 With regards prosecutions, these should be done in accordance with the council's enforcement policy, which references codes of practice with regards to prosecutions. The wording here is clarified.
- 2.13 Specific issues relating to wind turbines and solar arrays have been removed from the scheme, as they were specific issues at a particular time. It is no longer considered necessary to include them separately, and they will of course still be part of the call-in and consultation process, like other applications.
- 2.14 A copy of the revised scheme of delegation is attached to this report, tracked to show the changes proposed.

Other points considered

- 2.15 Councillors own proposals, or those where they have a pecuniary interest should go to planning committee, for reasons of transparency and openness. However, there is a grey area around those councillors (and potentially former councillors) that work as a planning agent. Currently the scheme of delegation does not require that applications where they are the agent go to committee.
- 2.16 The Local Government Association/Planning Advisory Service has guidance on this matter. This is dated from 2019 and states:

“Planning applications or proposals for changes to a local plan submitted by serving or former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Such proposals must be handled in a way that gives no grounds for accusations of favouritism. Any local guidance should address the following points in relation to proposals submitted by councillors and planning officers:

- *If they submit their own proposal to their authority they should play no part in its consideration*
- *A system should be devised to identify and manage such proposals and ensure probity in decision making*

- *The council's monitoring officer should be informed of such proposals*

A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as an applicant, should not seek to improperly influence the decision.

Proposals for a council's own development should be treated with the same transparency and impartiality as those of private developments".

- 2.17 It seems clear from this guidance, that this relates to a councillor (or indeed officer's) own development proposals. The system in place is, as stated above, that a councillor's own proposals will go to committee.
- 2.18 Another issue is that you would be potentially adversely affecting someone's business, by imposing restrictions on them, not imposed on their competitors. There are other safeguards that could be used, such as use of the whistleblowing policy, or audit checking from time to time to ascertain whether or not this is an issue, rather than the draconian step of insisting all applications dealt with by a councillor working as a planning agent should go to committee. It is therefore not proposed to change the existing scheme on this ground.
- 2.19 At present former councillors' applications do not have to go to committee. It has previously been considered sufficient to limit this to existing councillors.
- 2.20 There are also practical difficulties with this. The national application form does not refer to declaring if you were a former councillor, so in practical terms it will rely on local knowledge as to whether an application is from a former councillor or not. Many new staff will therefore be unaware whether or not this is the case.
- 2.21 It is not proposed to change the current system to include former councillors.

3.0 Sifting Panel

- 3.1 At the Council meeting of 25 January 2018, it was agreed that a planning sifting panel be set up to consider whether or not certain types of applications would need to go to Planning Committee. This did not affect a councillor's ability to call-in any application to committee, which remained in place, albeit it was slightly amended to ensure members only called-in applications in their own wards (unless exceptional reasons dictated otherwise), and that reasons for calling-in the application were given. The issue of councillor call-in is considered separately in this report.
- 3.2 The planning committee mainly deals with the more contentious applications, large-scale applications, or those raising a number of

competing issues that are finely balanced, with the remaining applications being dealt with under officer delegated powers.

- 3.3 To ensure there is a balance between those going to committee and those dealt with under officer delegated powers, the sifting panel provides a further sifting process for applications, and is led by councillors.
- 3.4 The sifting panel is made up of four councillors and two officers. These are the Chairman and Vice-Chairman of Planning Committee, the portfolio holder for development and regeneration, another member of the planning committee on a rotational basis, and two of the Executive Director – Environment & Planning, the Assistant Director – Environment & Planning or the Planning Control Manager.
- 3.5 The sifting panel processes have been slightly amended since its original inception. For example, sifting panel decisions are now published on the council's website so they are available for the public to view. The sifting panel is an integral part of the scheme of delegation, and it is proposed to retain it.

4.0 **Options considered**

4.1 A. Do not amend the scheme of delegation

This is not considered to be reasonable option, given the need to update and refresh the scheme, and in the light of ongoing concerns about councillor call-in rights and parish consultation procedures, when amended schemes come forward.

4.2 B. Amend the scheme of delegation

This is the preferred option, given the issues that have been raised since the last review, and which continue to be raised. It is also considered sensible to review the scheme and refresh it, as it is now over 4 years old.

5.0 **Policy Implications**

5.1 Relevant corporate priorities are considered to be:

Priority 1: Provide important local services within our available resources

Priority 2: Drive local economic and housing growth

5.2 The scheme of delegation is important as it sets out how the council deals with the statutory function of determining planning applications.

6.0 **Financial Implications**

6.1 There is extra resource required to take applications to committee, as they are more time consuming than delegated items. However, applicants have paid a fee, and this is part of the overall service.

7.0 Personnel Implications

7.1 There will potentially be the need to consider the resource implications of more processes, and possibly more applications going to committee.

8.0 Environmental Considerations

8.1 Whilst clearly development approved will have environmental considerations, the decision-making process, covered by this report will not. Whether the decision is delegated or not does not in itself affect the environment.

9.0 Statutory considerations

9.1 Determining planning applications and making other planning related decisions is a statutory function of the Borough Council. The scheme of delegation is a vitally important mechanism in carrying out that function.

10.0 Equality Impact Assessment (EIA)

10.1 There are no EIA impacts (see attached assessment).

11.0 Risk Management Implications

11.1 The main risk is a potential negative impact on national performance targets relating to speed of determining applications, if there are more applications going to planning committee. The ability for councillors to have a further opportunity to call-in on amended applications will, on most occasions, mean that the target date cannot be achieved. The same will be the case if parish councils are also given an extra 21 days to comment on amended schemes.

11.2 Extensions of time (EOT) will be needed in those circumstances, and they rely on the goodwill of applicants/agents in agreeing to an EOT.

11.3 In extreme circumstances there are penalties for poor performance, and the authority can be named a standards authority by Government. However, there is significant headroom at present with national targets, and councillors will need to decide if a potential downturn in performance is acceptable, when weighed against the additional consultation.

11.4 It is suggested that the operation of the scheme is reviewed in around 12 months time, to assess its operation and any impact.

12.0 Declarations of Interest / Dispensations Granted

12.1 None

Background Papers

None

Pre-Screening Equality Impact Assessment

Borough Council of
King's Lynn & West Norfolk



Name of policy/service/function	Planning Scheme of Delegation				
Is this a new or existing policy/service/function?	Existing (but revised)				
<p>Brief summary/description of the main aims of the policy/service/function being screened.</p> <p>Please state if this policy/service is rigidly constrained by statutory obligations</p>	<p>The scheme of delegation sets out how planning decisions are made in a council.</p> <p>It is a statutory function, but there is flexibility within the scheme as to how it operates.</p>				
Question	Answer				
<p>1. Is there any reason to believe that the policy/service/function could have a specific impact on people from one or more of the following groups according to their different protected characteristic, for example, because they have particular needs, experiences, issues or priorities or in terms of ability to access the service?</p> <p>Please tick the relevant box for each group.</p> <p>NB. Equality neutral means no negative impact on any group.</p>		Positive	Negative	Neutral	Unsure
	Age			x	
	Disability			x	
	Gender			x	
	Gender Re-assignment			x	
	Marriage/civil partnership			x	
	Pregnancy & maternity			x	
	Race			x	
	Religion or belief			x	
	Sexual orientation			x	
	Other (eg low income)			x	

