

**12 November 2013**

**Agenda Item:**

**REPORT OF CORPORATE DIRECTOR POLICY, PLANNING AND  
CORPORATE SERVICES**

**MODIFICATION TO THE EXISTING SCHEME OF DELEGATION FOR  
DECISION MAKING ON PLANNING APPLICATIONS**

**Purpose of the Report**

1. To seek Members' approval to a modification to the Council's existing scheme of delegation to allow decisions on planning applications which are recommended for refusal on the grounds of insufficient information to be delegated to the Corporate Director Policy, Planning and Corporate Services without referral to the Planning and Licensing Committee.

**Information and Advice**

2. The Development Management Team, within the Planning Group, deals with the determination of planning applications for minerals and waste development (County matters) and the County Council's own development proposals, along with monitoring and enforcement work. Officers currently operate within an adopted scheme of delegation, enabling officers to determine applications unless one of the following applies:
  - Those involving a site area greater than 15 hectares or extraction/input in excess of 30,000 tonnes per annum or new development with a floor space in excess of 10,000sq m
  - those involving a departure from the Development Plan
  - those accompanied by an Environmental Impact Assessment
  - those which have financial implications for the County, such as those which have an accompanying Planning obligation/S106 agreement
  - those which have received objections from the District or Parish Council or local member
  - those which have been referred to committee by a local member
  - **those which are recommended for refusal**
  - those which have received significant\* objections, within the statutory consultation period or other such period as agreed with the County Planning

Authority, from consultees or neighbouring occupiers (\* for clarification, 'significant' objections requiring referral must i) raise material planning consideration, ii) be irresolvable by amendment to the scheme or imposition of planning conditions, iii) involve more than three objections from separate properties)

- those which are submitted by the Policy, Planning and Corporate Services Department
  - those which raise issues of regional or national importance
  - those involving the determination of new conditions for minerals sites and those involving the making and serving of orders for revocation, etc where compensation is likely to become payable
3. The current proposal will amend the emboldened criteria above to read;
- **those which are recommended for refusal except those which are recommended for refusal on the grounds of insufficient information.** All applications which are recommended for refusal for any other reason, such as non-compliance with development plan policies, would continue to be referred to Planning and Licensing Committee for a decision. Ratification of these decisions by Members is considered desirable and beneficial in the event of a subsequent appeal. This proposal would have the added benefit of not taking up Members' time in reading papers relating to applications being refused on the grounds of insufficient information allowing them instead to concentrate on more controversial applications. This new provision for delegated refusals will apply to planning applications even where they meet any other criteria within the scheme of delegation, for instance where objections have been received or those accompanied by an Environmental Impact Assessment.
4. It is often the case that planning applications are deemed to be technically valid upon receipt according to the Council's validation criteria, although following detailed consideration of the issues or consultation with statutory or other consultees, further essential information is required before the application can be fully assessed. This might, for instance, be a full flood risk assessment required by the Environment Agency, an ecological survey required by Natural England or the County Council's ecologists, or a traffic assessment sought by Highways (Development Control). The planning application cannot be properly assessed until such information is provided to the County Council's satisfaction and that of the relevant consultee(s). This can sometimes take many months and the application remains on the books as a "live" application which shows up in the statistical returns to DCLG as an undetermined application. This is a very frequent occurrence. In fact, of the 49 County Matter applications determined over a 12 month period ending on 30<sup>th</sup> June 2013 27 applications had been delayed by awaiting further information. This equates to 55% of all County Matter applications determined within this period.
5. The County Council has always maintained that it is appropriate and professionally responsible to work proactively with applicants and consultees throughout the course of planning applications to enable the "right" decision to be reached even if this takes longer than Government prescribed timescales. These require the determination of minor applications within 8 weeks or 13

weeks for major applications (or 16 weeks where accompanied by an Environmental Impact Assessment). However, the Government is now focussing primarily on the “speed” of planning decisions as a measure of performance of local planning authorities. The only measure of “quality” relates to assess the proportion of decisions for major development overturned at appeal.

6. DCLG has recently published a league table of authorities dealing with County Matter applications and their determination of ‘major major’ applications over a two year period ending on 30<sup>th</sup> June 2013. The measure used to assess the speed of decisions is the average percentage of decisions on applications for major development made within the statutory determination period or within an extended period agreed in writing between the applicant and the local planning authority. A minimum threshold of 30% was set and, as Nottinghamshire County Council fell just below this, there is the possibility of the County Council being designated as one of the authorities that the Secretary of State considers that there are respects in which the authority is not adequately performing their function of determining applications. The County Council has written to DCLG highlighting its concerns with how the tables have been compiled and referring to exceptional circumstances. A decision on the final designation was awaited at the time of preparing this report. The potential implication for being a designated authority is that applicants for those particular proposals would have the option, should they choose, of applying directly to the Planning Inspectorate although they would forfeit any right to appeal. If designated the County Council will be expected to prepare an action plan of measures to address areas of weakness that it considers as having contributed to its underperformance.
7. A further measure relating to the speed of decisions recently introduced by the Government is the requirement to return the planning fee on applications (received after 1<sup>st</sup> October 2013) not determined within 26 weeks unless an extension of time has been agreed with the applicant.
8. Notwithstanding the eventual outcome on the ‘designation’ of the authority, the Development Management Team has started to put together a package of measures as part of an action plan to help improve practice. In future there will be greater emphasis on determining applications as they stand, in the light of the penalties set out above rather than the traditional approach of working proactively with applicants to bring about necessary amendments to schemes so as to make development proposals acceptable. The ability to refuse applications on the grounds of insufficient information where applicants, despite repeated requests, have failed to provide the necessary information without having to take the time to prepare and schedule committee reports. Delegated refusals will be used, when appropriate, in cases where planning applications are approaching Government prescribed determination dates and there is no prospect of the applicant providing the information in time.
9. Other measures to improve performance currently being considered include:
  - Updating the County Council’s Guidance on Validation to ensure all necessary information accompanies applications at the time of submission;

- Electronic alerts being set up on the 'back office' system (DefSoft) to prompt case officers to take appropriate action where applications are approaching target dates;
- Routinely agreeing extensions of time with applicants, where necessary; and
- Stepping up regular performance management meetings with case officers to identify work priorities.

These measure will be developed and finalised and will form the basis of an Action Plan submitted to DCLG for approval if it becomes necessary to do so.

### **Other Options Considered**

10. The alternative is to continue to report all applications recommended for refusal on the basis of insufficient information to Planning and Licensing Committee, however the lead-in times and timing of committee meetings will rarely enable decisions on such applications to be made within the statutory timeframes.

### **Reason for Recommendation**

11. It is anticipated that being able to refuse certain planning applications under delegated powers will lead to improvements in planning application performance and will enable the County Council to more frequently meet timescales prescribed by the Government.

### **Statutory and Policy Implications**

12. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment, and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

### **Financial Implications**

13. In the event that Nottinghamshire County Council is designated by DCLG and applicants choose to submit applications directly to the Planning Inspectorate for a decision the County Council would not receive the associated planning fee. Additionally, on applications (received after 1st October) which are not determined within 26 weeks and where the County Council failed to agree an extension of time, the County Council would be required to **return** the planning fee.

### **Implications for Service Users**

13. It is anticipated that the proposed measures set out in paragraph 9 above are likely to improve performance and lead to decisions being made within shorter timeframes. An implication also arises for applicants who may have their application refused on grounds of insufficient information rather than following full consideration of all relevant planning issues.

## **Equalities, Crime and Disorder Implications**

15. There are no equalities or crime and disorder implications.

## **Human Rights Implications**

16. The relevant issues arising out of consideration of the Human Rights Act have been assessed in accordance with the Council's adopted protocol. Rights under Article 8 and Article 1 of the First Protocol are those to be considered. In this case, however, there are no impacts of any substance on individuals and therefore with rights safeguarded under these articles.

## **RECOMMENDATION**

1) It is RECOMMENDED that Members approve a modification to the currently approved scheme of delegation to allow for decisions on planning applications which are recommended for refusal on the grounds on insufficient information to be delegated to the Corporate Director, Policy, Planning and Corporate Services.

**JAYNE FRANCIS-WARD**

**Corporate Director Policy, Planning and Corporate Services**

**For any enquiries about this report please contact:**

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## **Constitutional Comments [NAB 21/10/13]**

17. Planning and Licensing Committee has authority to approve the recommendation set out in this report by virtue of its terms of reference.

## **Financial Comments [SEM 23/10/13]**

18. The financial implications are set out in the report.

## **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

## **Electoral Division(s) and Member(s) Affected**

All

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