



20 October 2015

Agenda Item: 9

REPORT OF CORPORATE DIRECTOR – PLACE

PROPOSED MODIFICATIONS TO THE COUNTY COUNCIL'S SCHEME OF DELEGATION FOR DECISION MAKING ON PLANNING APPLICATIONS

Purpose of Report

1. To seek Members' approval to a "light touch" review of the Council's existing scheme of delegation for the determination of planning applications. The revised scheme aims to improve planning application determination times, reflect the current structure of the County Council, improve clarity and ensure consistency with current planning legislation and the Council's consultation procedures.

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:
 - (a) 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;
 - (b) those involving a departure from the Development Plan;
 - (c) those accompanied by an Environmental Impact Assessment;
 - (d) those which have financial implications for the County, such as those which have an accompanying Planning obligation/S106 agreement;
 - (e) those which have received objections from the District or Parish Council or local Member;
 - (f) those which have been referred to committee by a local Member;
 - (g) those which are recommended for refusal unless the refusal is on the grounds of insufficient information;

- (h) 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
- (i) those which are submitted by the Policy, Planning and Corporate Services Department;
 - (j) those which raise issues of regional or national importance;
 - (k) 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 process of delegating decision-making powers on planning applications is actively encouraged by Central Government. The current scheme of delegation outlined above has been in place for around a decade. It has remained unchanged during this time except for one minor amendment in 2013 when the refusal of planning applications on grounds of insufficient information was agreed as an additional delegated power.
4. Using the existing scheme of delegation the vast majority of decisions on planning applications are delegated to officers. For the period of March 2014 to April 2015 only 24% of County Matter applications and 12% of County Council applications were referred to Planning and Licensing Committee for a decision. It is acknowledged that the current scheme is working well and sets the right balance of involving Members in the most significant and controversial applications. Planning and Licensing Committee has a significant and valuable role to play in reaching decisions and is an important democratic element of the planning process. The public speaking arrangement allows individuals, both applicants and the general public, to vocalise their views. Notwithstanding the importance of Members' involvement in the process bringing applications to Committee does lengthen the time taken for determining applications and impacts on performance targets set by the Government. The Department of Communities and Local Government (DCLG) encourages Councils to have an effective and up to date delegation scheme as a means of speeding up decision making. It is therefore considered timely to review the scheme to bring it up to date and ensure that it is still "fit for purpose".

Key Reasons for the Update

5. One of the key reasons for reviewing the scheme of delegation is to improve determination times of certain types of planning applications which, in turn, will

help meet overall performance targets. In 2013 the Growth and Infrastructure Act gave the Secretary of State power to “designate” local planning authorities if their performance fell below an acceptable standard. Later the same year DCLG published a league table of authorities dealing with county matter applications and their determination of major applications over a two year period ending on 30th June 2013. The measure used to assess the speed of decisions is the average percentage of decisions made within the statutory determination period or within an extended period agreed in writing with the applicant. At that time a minimum threshold was set at 30% but this has since been raised to 40% and then in August this year to 50%. Failure to meet this target could result in the County Council being a designated authority whereby applicants for major applications would have the option of applying directly to the Planning Inspectorate for a decision. This would result in the loss of local decision making and the income from planning application fees. Whilst the County Council has performed well since the above measures were introduced, it is considered important not to be complacent and a review of the scheme of delegation is considered important to ensure that decisions continue to be made in a timely manner.

6. The scheme of delegation has also been reviewed in order to bring it in line with current planning legislation and regulations. For instance, since its adoption, the criteria for applications which constitute departures requiring referral to the Secretary of State have changed. In the past the Secretary of State had to be notified of all “departure applications”; that is planning applications which are not consistent with policies in the development plan. Under this previous regime even very minor development, such as kiosks at sewage treatment works in the Green Belt, required referral.
7. The criteria for referral were amended by the Town and Country Planning (Consultation) (England) Direction 2009 to reduce the situations in which the Secretary of State now has to be notified. In relation to planning applications determined by the County Council, the need to refer to the Secretary of State only now relates to certain Green Belt development, development affecting playing fields to which Sport England has objected, and development in a flood risk area to which the Environment Agency has made an objection. Any application which meets any of these criteria would be referred to committee for a decision. In addition to this, and to reflect recent changes to responsibilities relating to flood risk, it is proposed to amend the scheme of delegation so that development in a flood risk area to which the County Council, as Local Lead Flood Risk Authority, raises an objection would also be referred to Committee for determination.
8. It is proposed that “departure applications” which do not meet the criteria for referral to the Secretary of State will only be determined under delegated powers with the prior agreement of the Local Member. It is recommended that the scheme of delegation be amended to reflect these changes.
9. Since the scheme of delegation was adopted the Council has undergone a number of restructuring programmes, the most recent of which came into effect on 1st September 2015. Previously applications submitted by teams within Policy, Planning and Corporate Services would have required referral to

committee to avoid potential criticism that the applicant was part of the same department as the department making the decision and could therefore be seen as “judge and jury”. As the Development Management Team is now part of Place Department, it is suggested that this restriction should now relate to applications where a team within the Place Department is stated on the planning application form as the applicant. However, in order to allow any such applications which do not raise objections to be determined under delegated authority, it is recommended that referral to Committee would only be required where the application has been subject to objections, whether these are from a single consultee, neighbour, local Members, Parish or District/Borough Council etc. Only where applications from Place Department receive no objections would there be delegated authority to officers to determine the application.

10. It is considered that this criterion should only apply when the Place Department is named as the applicant on the application forms, rather than the agent. The County Council’s Design Teams, which are in the Place Department, often act as the agent for planning applications submitted by the Children, Families and Cultural Services Department (CFCS) for new schools development. However, the Design Teams’ role is solely to design schemes which meet the brief set them by CFCS and to submit applications on their behalf. It is CFCS as the applicant, not one of the Design Teams as the agent, which is driving the proposed development. It can be confirmed that this is how the criterion as presently worded (“applications which are submitted by the Policy, Planning and Corporate Services Department”) has been interpreted in the past.
11. It is suggested that this criterion is worded such that following any future restructuring of the County Council delegated powers will not apply to the determination of any applications made by the same department in which the Development Management Team is located and where there are any objections raised to the proposal.
12. The proposed scheme of delegation recommends that applications involving a site area greater than 15 hectares be increased to 25 hectares to allow compatibility with thresholds set out in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, which were last amended in 2015. It is considered that the size of the site alone rarely has implications for the complexity or contentiousness of a proposal. All other criteria set out in this category in the scheme will remain unchanged. A new addition to the scheme of delegation is the proposal to bring applications relating to emerging technologies to Committee for determination. This will enable Members to be kept up to date with advances in technologies such as applications relating to emerging waste technologies.
13. Other minor changes and general editing are suggested to give the scheme of delegation greater clarity and consistency with other County Council procedures.

Proposed Changes to the Scheme of Delegation

14. The following section sets out the key changes to the scheme of delegation, with the suggested amendments shown in bold. The full scheme of delegation,

as proposed, with the reasons for the changes to the individual criterion, is set out in Appendix 1 to this report.

- (a) **Applications** involving a site area greater than **25** hectares or extraction/input in excess of 30,000 tonnes per annum or new development with a floor space in excess of 10,000 square metres
- (b) **Applications** involving a departure from the Development Plan **and which meet the criteria for applications being referred to the Secretary of State before granting planning permission, plus development in a Flood Risk Area to which the County Council, as Lead Local Flood Authority, has made an objection. Departure applications which do not meet the criteria for referral to the Secretary of State will only be determined under delegated powers with the prior agreement of the Local Member**
- (c) **Applications which have S106 agreements/Planning obligations** and those which have **other** financial implications for the County Council
- (d) **Applications** which have received **valid planning** objections, **in writing**, from the District/**Borough** or Parish Council or local Member **within the statutory consultation period or within an extended period as agreed by the County Council, or where the local Member has requested that the application be referred to Planning and Licensing Committee for determination;**
- (e) **Applications** which are submitted by **Place Department (or any subsequent Department following any future restructuring where the applicant is in the same Department as the Development Management Team)** where these are the subject of any objections
- (f) **Applications** which raise issues of regional or national importance **or relate to proposals involving emerging technologies**

Other Options Considered

- 15. Members may wish to consider leaving the scheme of delegation unchanged but the revisions have been proposed for the reasons set out in the report and it would allow a scheme used for determining applications that is out of date and which does not reflect the most up to date legislation and guidance.

Reasons for Recommendations

- 16. It is not anticipated that the revised scheme of delegation will dramatically reduce the number of planning applications being referred to Members for determination. Members will continue to be involved in the most significant and controversial applications. However, the proposed changes are considered to be beneficial in terms of making a contribution to meeting the Government's performance targets. In addition, the scheme will benefit from being edited to give it greater clarity and the changes will ensure that the scheme reflects

current planning legislation and regulations and is consistent with the Council consultation procedures.

Statutory and Policy Implications

17. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Implications for Service Users

18. It is anticipated that the revised scheme of delegation is likely to improve performance and lead to decisions being made within shorter timeframes which is considered to be of benefit to applicants. People engaging with the planning process as a consultee will also benefit from the revised scheme given that it will be more up to date and clearer.

Financial Implications

19. In the event that Nottinghamshire County Council is designated by DCLG under the circumstances set out in paragraph 5 above and applicants choose to submit their applications directly to the Planning Inspectorate for determination the County Council would not receive the associated planning fee. Additionally, since October 2013 applications which are not determined within 26 weeks and where the County Council fails to agree an extension of time, the County Council would be required to **return** the planning fee.

Human Rights Implications

20. The determination of all planning applications, whether by officers or Members, requires full compliance with the relevant Articles of the Human Rights Act. This requirement is unchanged by the introduction of a revised scheme of delegation.

RECOMMENDATIONS

21. It is RECOMMENDED that Members approve the revised scheme of delegation as set out in Appendix 1 attached to this Committee report.

TIM GREGORY

Corporate Director – Place

Constitutional Comments

Planning and Licensing Committee is the appropriate body to consider the content of this report.

[SLB 06/10/2015]

Comments of the Service Director - Finance

The financial implications are set out in the report.

[SES 01/10/15]

Background Papers Available for Inspection

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for public inspection by virtue of the Local Government (Access to Information) Act 1985.

Electoral Divisions and Members Affected

All

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Existing thresholds	Proposed new thresholds	Reason for change/no change	Proposed wording of threshold (changes in bold)
Applications 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 10,000sqm	Increase 15 hectares to 25 hectares, but no change to the other criteria. Size of site alone rarely has implications for complexity/contentiousness of a proposal.	To be compatible with site area criteria required by EIA Regulations (for Schedule 1 development). Other criteria to remain the same to enable Committee consideration of issues relating to large scale mineral and waste development, such as amenity considerations and vehicular movements etc.	Applications involving a site area greater than 25 hectares or extraction/input in excess of 30,000 tonnes per annum or new development with a floor space in excess of 10,000sqm
Applications involving a departure from the Development Plan	Only to apply to those applications where the nature of the departure meets the “call in” criteria requiring referral to the Secretary of State prior to permission being issued.	Brings the threshold in line with Government’s most recent criteria for calling in applications involving a departure. Previously very minor departures would have needed referral. The wording of the proposed criteria enables Local Members to refer departure applications to committee for determination even where these do not require subsequent referral to the Secretary of State. All development in flood risk areas which are the subject of objections from the Local Lead Flood Risk Authority will be similarly referred to Committee for determination	Applications involving a departure from the Development Plan and which meet the call-in criteria for applications being referred to the Secretary of State before granting planning permission, plus development in a Flood Risk Area to which the County Council, as Lead Local Flood Risk Authority, has made an objection. Departure applications which do not meet the criteria for referral to the Secretary of State will only be determined under delegated powers with the prior agreement of the Local Member

Applications accompanied by an Environmental Impact Assessment	No change proposed	Criterion to remain the same to enable Committee consideration of large scale mineral, waste and County Council development and those in sensitive locations.	Applications accompanied by an Environmental Impact Assessment
Applications with financial implications for the County, such as those which have an accompanying Planning obligation/S106 agreement	Reworded for clarification	Criterion to remain so Members can be aware of any financial implications for the County Council and other matters of interest, such as agreed HGV routes.	Applications which have S106 agreements/Planning Obligations and those which have other financial implications for the County Council
Applications which have received objections from the District or Parish Council or local Member	Additional details added for clarity and consistency with Committee speaking protocol Borough Council added for completeness of the names of the Nottinghamshire local councils.	To ensure that objections are valid in planning terms, are put in writing and are timely in terms of enabling the determination of planning applications within statutory timeframes.	Applications which have received valid planning objections, in writing , from the District/ Borough or Parish Council or the Local Member within the statutory consultation period or within an extended period as agreed by the County Council, or where the local Member has requested that the application be referred to Planning and Licensing Committee for determination;
Applications which have been referred to committee by a local Member	No change proposed	Gives Members the assurance that any planning application in their Division can be referred to committee for a decision should they deem it necessary or desirable.	Applications which have been referred to Committee by a local Member

Applications which are recommended for refusal unless the refusal is on the grounds of insufficient information	No change proposed	Except in cases of refusal on the grounds of insufficient information Members' endorsement of the decision to refuse an application is considered to be beneficial if the decision is subsequently challenged by an appeal.	Applications which are recommended for refusal unless the refusal is on the grounds of insufficient information
Applications 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)	No change proposed, except the wording of County Planning Authority to County Council for consistency	Retaining the threshold at more than 3 objections from separate households is considered to be reasonable. The need for responses to be received within the statutory consultation period, or an extended period as agreed by the County Council, is imperative to enable the Authority to meet its statutory targets for determination.	Applications which have received significant* objections, within the statutory consultation period or other such period as agreed with the County Council , from consultees or neighbouring occupiers (* for clarification, 'significant' objections requiring referral must i) raise material planning considerations, ii) be irresolvable by amendment to the scheme or imposition of planning conditions, iii) involve more than three objections from separate properties)

Applications submitted by Policy, Planning and Corporate Services	Change in wording to ensure that those applications submitted by the same department, which are the subject of any objection, are referred to Members for a decision	To reflect the restructuring of the County Council departments.	Applications submitted by Place Department (or any subsequent Department, following any future restructuring where the applicant is in the same Department as the Development Management Team) where these are the subject of any objections
Applications which raise issues of regional or national importance	Add in wording relating to emerging technologies, such as energy related developments	To ensure that Members are kept informed about proposals which have more than local significance or relate to novel issues of development management	Applications which raise issues of regional or national importance or relate to proposals involving emerging technologies
Applications involving the determination of new conditions for mineral sites and those involving the making and serving of orders for revocation, etc where compensation is likely to become payable	No change.	Retain criteria in order that Members are made aware of any applications which have financial implications for the County Council.	Applications involving the determination of new conditions for mineral sites and those involving the making and serving of orders for revocation, etc where compensation is likely to become payable