

Title of meeting:	Governance and Audit and Standards Meeting
Date of meeting:	5 November 2021
Subject:	Scheme of Delegation for planning decision making
Report by:	Ian Maguire, Assistant Director Planning & Economic Growth, Regeneration
Wards affected:	All
Key decision:	No
Full Council decision:	No

1. Purpose of report

- 1.1. To purpose of this report is seek approvals to amendments to the Scheme of Delegation to ensure the Planning Committee time is utilised efficiently to deal with important, strategic or especially contentious applications as quickly as possible.

2. Recommendations

- 2.1 To approve the amendment of paragraph 57 of the Scheme of Delegation to raise the threshold for the number of adverse representations needed to require committee consideration from 1 (one) to 3 (three) and remove the requirement for objectors to also request to attend the meeting as a deputation.
- 2.2 To approve the amendment of paragraph 50, 54 and 57 of the Scheme of Delegation to include the exception for applications for certificates of lawfulness or applications for Prior Notifications or Approvals.

3. Background

- 3.1 To ensure the efficient operation of the Council the Constitution prescribes those decisions that, due to their significance or implications are reserved to Portfolio Holders, Committees or Full Council for determination and those decisions that are delegated to Officers to determine in accordance with the adopted guidance and policies of the Council.
- 3.2 This Scheme of Delegation includes those specific types of planning applications that are reserved for the determination of the Planning Committee and those that

can, therefore be determined by Officers. Normally over 95% of applications are determined under Delegated Authority.

- 3.3 Due to restrictions in accessing the Civic Offices, and other practical restrictions arising from 'lockdown' during 2020 a backlog of applications requiring Planning Committee consideration built up this includes cases requiring committee approval under the scheme of delegation. More cases are of course added to this list as new applications are received and progress and representations and consultation responses are received.
- 3.4 To assist in managing this issue a temporary amendment to the Scheme of Delegation was made in August 2020, raising the scale threshold for those applications that required applications to be determined by the Planning Committee. That alteration to the scheme was in place between August 2020 and February 2021 and has since been made a permanent alteration to the Scheme of Delegation following a decision of the Portfolio Holder on 16th September 2021.
- 3.5 While in operation it was considered that this recent amendment was effective in reducing unnecessary burdens to the planning committee without adversely effecting users of the planning services. Members of the planning committee however noted that there were still a number of 'minor' cases that were not delegated to officers and expressed an opinion that such matters did not require committee consideration. As part of good governance a Council should keep its constitution and its scheme of delegation under review and consequently this report therefore further amendments that would reduce unnecessary referral of applications to the planning committee.

4. Reasons for recommendations

- 4.1 It is in the public interest for the local planning authority to have effective delegation arrangements in place to ensure that decisions on planning applications that raise no significant planning issues are made quickly and that resources are appropriately concentrated on the applications of greatest significance to the local area. It can also be noted that research undertaken by the Local Government Association's Planning Advisory Service has shown that on average applications that are decided at planning committee costs an authority around 10 times more to resource than delegated decisions. The direct cost is of course mostly in Officer time as a significant amount of additional time is needed to support the Committee in their decision making.
- 4.2 As well as the cost and capacity saving to the authority there are advantages of ensuring the planning committees minimise their sitting time. The Planning Advisory Service again recommends that a maximum 2 hours sitting for the planning committee should be sought to ensure members can best engage with the decisions before them.
- 4.3 It is also noted that parts of the current Scheme of Delegation are very different from the prevailing approach to such decision making and are considered likely

to result in disproportionately impacts, prevent some cases that may benefit from Committee consideration being taken before the Committee and requiring some cases that do not merit Committee consideration being nevertheless determined in that way. It is important to note that a Scheme of Delegation that requires too great a proportion of applications to come to Committee will have the inverse effect of reducing access to the Committee as there would be significant delays for schemes to find space on an agenda and ultimately decision would need to be made regarding the prioritisation of committee time.

4.4 For these reasons it is important to ensure the Scheme of Delegation is bringing to the committee only those cases that require committee attention. The current Scheme, as amended in September 2021, includes eight grounds that will potentially reserve an application for committee consideration:

- *Para 50. All applications required to be **referred to the Secretary of State under the Town and Country Planning (Consultation) (England) Direction 2009**;*
- *Para 51. Any applications where any **Member so requests** to the Assistant Director of Planning and Economic Growth providing a written reason, within 28 days of the registration of the application;*
- *Para 52. Any applications which are likely to have **significant implications** in the opinion of the Assistant Director of Planning and Economic Growth;*
- *Para 53. Any applications which are recommended for approval and that seek planning permission for **1,000 square metres or more of new non-residential floor area or for ten or more new dwellings***
- *Para 54. Any applications which are recommended for approval but on which an objection has been received from a **statutory consultee**, which has not been resolved by negotiation or through the imposition of conditions;*
- *Para 55. Any applications submitted by, or on behalf of, a **Councillor** of the Authority (or their spouse/civil partner or a person with whom they are living as spouse/civil partner), or by any **member of the Council's staff** (or their spouse/civil partner or a person with whom they are living as spouse/civil partner)*
- *Para 56. Any applications, except 'Householder applications', applications for advertisement consent, applications for works to TPO trees, applications in respect of trees in Conservation Areas or applications for minor non-residential alterations or extensions (industrial / commercial / leisure etc extensions, alterations and change of use resulting in less than (net) 250 sq. m of additional floorspace) **submitted by or on behalf of the Council** for its own developments or on land where the Council is the land owner; and*
- *Para 57. Any applications which are recommended for approval where **adverse representations** based on material planning considerations have*

been received and a request has been received to attend committee as a deputation, except in the case of applications for certificates of lawfulness or applications for Prior Notifications.

- Para 58. Any applications for **Minor Material Amendments** (made under s73 of the Town and Country Planning Act 1990, or any section which revokes or re-enacts that section) **or applications for Reserved Matters** following the grant of Outline Planning Permission, that do, in the opinion of the ADPEG have significant implications.

4.5 Any of these grounds could be amended to reduce or change the requirement for planning committee to consider the application. Consequently each paragraph is concerned in turn below.

4.6 *Para 50. All applications required to be **referred to the Secretary of State under the Town and Country Planning (Consultation) (England) Direction 2009:** The Consultation Direction describes those cases of potentially greater than local impact that the Secretary of State may wish to reserve to himself for consideration. In light of this this ground captures only the most significant cases, and such cases that will always warrant consideration by the planning committee. **No amendment to this paragraph is recommended.***

4.7 *Para 51. Any applications where any **Member so requests** to the Assistant Director of Planning and Economic Growth providing a written reason, within 28 days of the registration of the application:*
The core role of accountable Members as decision makers of the Council must be preserved as paramount. **No amendment to this paragraph is recommended.**

4.8 *Para 52. Any applications which are likely to have **significant implications** in the opinion of the Assistant Director of Planning and Economic Growth:*
To ensure matters of significant importance can be considered in a transparent way to preserve public confidence in the statutory planning function a method of promoting decisions to the planning committee on their own specific merits is necessary. **No amendment to this paragraph is recommended.**

4.9 *Para 53. Any applications which are recommended for approval and that seek **planning permission for 1,000 square metres or more of new non-residential floor area or for ten or more new dwellings:***
This paragraph was amended in the previous review of the Scheme of Delegation in September 2021. The threshold of 10+ dwellings aligns the threshold with the prescribed application description of a 'Major' application, making it easier for applicants to understand the determination process. **No further amendment to this paragraph is recommended.**

4.10 *Para 54. Any applications which are recommended for approval but on which an objection has been received from a **statutory consultee**, which has not been resolved by negotiation or through the imposition of conditions:*

Statutory consultees are the expert advisors within specific technical fields that inform decision making. Some, such as Historic England and Highways England have defined authority if they object to an application to prevent its determination without reference to the relevant secretary of state. Where the Council is being called upon to resolve an application contrary to the expert technical opinion of a statutory consultee this is appropriate for Committee consideration. **No amendment to this paragraph is recommended.**

- 4.11 *Para 55. Any applications submitted by, or on behalf of, a **Councillor** of the Authority (or their spouse/civil partner or a person with whom they are living as spouse/civil partner), or by any **member of the Council's staff** (or their spouse/civil partner or a person with whom they are living as spouse/civil partner):*

To ensure that applications made by those with close personal involvement in the normal business of the Council, i.e. Members and Staff, can be considered in a transparent way to preserve public confidence in the statutory planning function this ground is considered necessary. **No amendment to this paragraph is recommended**

- 4.12 *Para 56. Any applications, except 'Householder applications', applications for advertisement consent, applications for works to TPO trees, applications in respect of trees in Conservation Areas or applications for minor non-residential alterations or extensions (industrial / commercial / leisure etc extensions, alterations and change of use resulting in less than (net) 250 sq. m of additional floorspace) **submitted by or on behalf of the Council** for its own developments or on land where the Council is the land owner:*

The grounds laid out in paragraph 56, which deals with the Council's own applications are considered appropriate as the consideration of development by, or on land of, the Council should be undertaken with the maximum transparency. This paragraph already includes a conditional, pragmatic element allowing smaller scale Council development to be considered under Officer delegation so no changes are considered appropriate to this part to streamline the committees considerations. **No amendment to this paragraph is recommended**

- 4.13 *Para 57. Any applications which are recommended for approval where **adverse representations** based on material planning considerations have been received **and a request has been received to attend committee as a deputation**, except in the case of applications for certificates of lawfulness or applications for Prior Notifications:*

Ensuring that elected Members can consider the applications that, although maybe small in scale are nevertheless considered in their locality to be especially contentious, as may be demonstrated through adverse representations, is essential and a universal element of planning schemes of delegation across the country.

- 4.14 The threshold to bring matters to committee under Para 57 in Portsmouth is however abnormally low when compared to near and neighbouring authorities, with a single adverse representation sufficient to require committee

consideration if that objector has made a request to also attend the committee as a deputation. By comparison in Southampton City Council "five written letters of representation...from five different individuals within the administrative ward of the City" is set as the threshold to bring something to a committee of Members; and in Winchester City Council "six or more representations "... from separate individual addresses..."" is the threshold. Both of these thresholds are compared to other LPAs considered high, but gives an illustration of the range that might be considered as an appropriate threshold to set.

- 4.15 The current Portsmouth CC threshold under para 57 can mean small scale simple applications can require disproportionate delay and cost to the public through the need for committee consideration when only a single person objects to the development, notwithstanding that *all* neighbours that share a boundary with a development site are directly notified of an application. A higher threshold, representing a more proportionate response to the number of objections compared to the normal number of notifications is therefore recommended.
- 4.16 Consideration should also be given to removing the current requirement in para 57 for a request to attend the meeting as a deputation as a stipulation of placing a matter on the committee agenda under this section of the Scheme. This requirement potentially disadvantages those unable or unwilling to attend a meeting and creates the incorrect impression that matters raised as a verbal deputation to the committee will be given greater weight than matters raised in the written representation as part of the public consideration of the application. Under the current scheme of delegation applications with 30 letters of objection on legitimate planning grounds, but without an accompanying request to make a deputation are determined under delegated authority, whereas applications with only a single letter of objection, if it is accompanied by a request to make a deputation is required to be considered by the planning committee. It is not considered that this is proportionate or likely to meet the legitimate expectation of those residents and users engaged with the planning process.
- 4.17 Consequently to create better and fairer access to the Planning committee under para 57 it is **Recommended that the number of adverse representation required for committee consideration be changed from ...' adverse representations based on material planning considerations have been received and a request has been received to attend committee as a deputation,...** to **'three adverse representations based on material planning considerations have been received'** (and omit reference to request to attend committee as a deputation).
- 4.18 *Para 58. Any applications for **Minor Material Amendments** (made under s73 of the Town and Country Planning Act 1990, or any section which revokes or re-enacts that section) or applications for **Reserved Matters** following the grant of Outline Planning Permission, that do, in the opinion of the ADPEG have significant implications.*
The grounds of Para 58 confirm that, in normal circumstances applications to amend previously approved applications, or agree the Reserved Matters of

previously approved Outline applications, that do not raise new significant implications, remain capable of delegated determination. However exceptionally such matters may raise new significant implications and as such will require committee consideration. This clarification is considered appropriate. **No amendment to this paragraph is recommended**

- 4.19 Para 57, and 53 following the amendment of September 2021 specifically highlights an exception in its application for certificates of lawfulness and prior notifications. These exceptions are included for two different reasons. Certificates lawfulness are determinations of fact, sometimes on the balance of probability, different from the application of judgement that Members are well placed to provide. While Members can determine Certificates of Lawfulness the decisions to be reached are often technical in there basis, for example the application of the General Permitted Development Order, and therefore requiring Members to make this judgement based on adverse representations alone is not appropriate. Prior Notifications are an application process under the General Permitted Development Order wherein the LPA has no authority to object to the principal of the development, but rather is not notified of the proposal to enable it to require its prior approval of prescribed matters dependent on the nature of the permitted development proposal. These prior notifications and prior approvals are time limited, such that if a decision is delayed they are automatically approved. Due to the need to publish committee agendas in advance of meetings and the additional time needed to prepare such agendas there is a risk that requiring committee determination will prevent the Council making a decision on such applications.
- 4.20 The exceptions for Certificates of Lawfulness and Prior Notifications discussed in the preceding paragraph are currently only applied to matters brought to Committee under the grounds of paragraph 57 (adverse representations). While this is the most common reason such applications might be brought to the Committee the reasoning for these exceptions applies equally to the circumstances of paragraphs 50 and 54. For clarity it is therefore suggested that the express exception for these application types is included in those paragraphs as well. **Recommended that the wording '...except in the case of applications for certificates of lawfulness or applications for Prior Notifications or Approvals' is included in paragraphs 50 and 54.**
- 4.21 It must be noted that the different criteria and thresholds in this section of the Constitution work inclusively, so, for example even applications less than 10 new dwellings, if the recommended changes are made, can still be considered by the planning committee if the criteria of another paragraph is engaged, such as a request by a Member of the Council to reserve the application for committee consideration.
- 5. Equality impact assessment**
- 5.1 An equality impact assessment is not required as the recommendations do not have a disproportionate negative impact on any of the specific protected characteristics as described in the Equality Act 2010.

6. Legal implications

6.1 The Council's constitution describes the processes by which planning applications are considered. It is regularly reviewed to ensure it promotes efficiency and upholds the principles of good and transparent public decision making

7. Director of Finance's comments

7.1 There are no direct financial implications as a result of approving these recommendations. Whilst this will improve the efficiency of the planning process no cashable savings are likely to be realised.

.....
Signed by:

Appendices: None

Background list of documents: Portsmouth City Council Constitution Part 2 Section 5B Delegation of Decision Making to Officers - As Amended by the decision meeting of the Cabinet Member for Planning Policy & City Development on 16 September 2021.

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by: