
Subject: REVIEW OF DELEGATED POWERS GIVEN TO HEAD OF PLANNING AND DEVELOPMENT FOR DETERMINING PLANNING APPLICATIONS

Meeting and Date: Governance Committee – 29 September 2022
Council – 12 October 2022

Report of: Harvey Rudd, Solicitor to the Council

Classification: Unclassified

Purpose of the report: To seek the approval of the Governance Committee for the amendments to the Scheme of Officer Delegations set out in this report

Recommendation: That the Governance Committee approve the amendments to the Scheme of Officer Delegation and recommend that the Council amend the Constitution accordingly

1. Summary

- 1.1 The report examines the existing scheme of delegation for planning applications being determined at Planning Committee, which is currently based on whether 6 or more contrary representations to the officer recommendation are received.
- 1.2 The findings, set out below, indicate that the existing scheme of delegation is outdated and no longer fit for purpose as a means of identifying planning applications of sufficient importance for referral to committee. The current scheme of delegation readily lends itself to parties ensuring that the requisite number of representations are submitted so as to require reference to the Planning Committee. This leads to too many small-scale planning applications being referred to committee, drawing attention away from applications of legitimate wider public interest, that should be the committee's main focus. The reporting of smaller cases also slows the throughput of applications generally and adds a burden on resources associated with their reporting.
- 1.3 Following evidence gathering on planning application statistics and a review of other Kent authority delegation schemes, this report recommends a new scheme of delegation. This would be for major planning applications to be reported to committee where a significant number of contrary representations to the officer recommendation have been received. The current member call-in route for applications would also be amended to ensure call-ins occur where there are robust and legitimate planning grounds, with the member calling-in the application attending committee to address the issues raised.

2. Introduction and Background

- 2.1 Part C to Section 6 of the Constitution of the Council (Council and Executive Functions) details Council functions delegated to the Head of Planning and Development. These include the power to determine planning applications under the Town and Country Planning (T&CP) Act 1990. Conditions/limitations apply to the exercising of these powers, with circumstances outlined whereby planning applications, submitted under Section 70(1)(a) and (b) of the Act, must be referred to planning committee for determination. (This part of the Act only applies to applications for planning permission and excludes referral of a range of applications, including the following:

- (i) Reserve matters;
- (ii) variation and/or removal of conditions previously imposed on a planning permission;
- (iii) advertisement consent,
- (iv) certificate of lawful development (proposed/existing);
- (v) prior approvals (28/56 day determinations); and
- (vi) listed building consent).

2.2 The existing Scheme of Delegation (see Appendix 1) requires planning applications to be referred to planning committee in the following circumstances:

- (a) Where 6 or more public representations have been received that are contrary to the intended officer recommendation (e.g., 6 or more letters of objection are received when the officer recommendation is to approve); and
- (b) There is a written request by a Member, identifying planning reasons, for the application to be called-in to committee.

As a matter of practice (not cited in the Scheme), the Head of Planning and Development does on occasion choose not to exercise her delegated authority, for example if the committee has given its opinion about a previous application on the same site, which the intended officer recommendation would be contrary to, the application is as a consequence reported to Planning Committee.

2.3 The scheme of delegation has been operating in this manner (or very similarly to it) for well in excess of 10 years. Over that time, there have been significant changes to the way the development management (DM) process is administered, particularly in regard to the use of digital platforms. These have enhanced access to the planning process, with the public now able to view application information on-line and submit comments by email. The existing Scheme and previous variants of it, were devised at a time when planning applications essentially had to be viewed at a local Council office and public comments were made by letter. Given these changes and in view of other experiences with the scheme of delegation (explained below) it was decided to carry out a review of how effectively it was operating.

2.4 Several factors gave added impetus to the need for a review:

- (a) The relative ease by which comments can be submitted on planning applications (on-line), raising a question as to whether the submission of 6 comments remains a meaningful measure of likely public interest in/concern about a planning application.
- (b) The concern that an increasing number of objectors to/proponents of development might be canvassing for representation to trigger a committee referral, with in-or-around 6 contrary representations being received with a degree of regularity and sometimes (in the case of support letters) at one time, just after the receipt of the application and on occasion from individuals living some distance from the application site. Such occurrences raised questions as to whether the number of representations received is a genuine measure of local public interest.
- (c) The fact that the 'number of contrary representations' model for referring applications to planning committee (as operated at Dover) is not currently used by many other Kent local planning authorities and that other authorities also determine a higher percentage of their applications under powers delegated to officers.
- (d) The sense that committee should generally be focusing on larger and more controversial planning applications of wider public interest, rather than small-

scale schemes, including householder applications, which are being routinely reported.

- (e) The emergence of a backlog of applications waiting to go to planning committee, causing delay and inconvenience to customers. While partly arising from the more constrained committee operation during Covid, the backlog has emphasised the need to review how/which applications are referred to committee, so ensuring applications are dealt with efficiently and in a timely manner.
- (f) Workloads within the DM service remain high with planning application numbers (and fee income) continuing to be strong. Reporting an application to planning committee is a much more resource intensive process, compared to dealing with an application under delegated powers – with additional time spent on preparing committee presentations, attending committee and engagement by senior officers. This highlights the need for applications to only go to committee when necessary, which is not considered to be the case at present.

2.5 To inform the review, an analysis was undertaken of how/what applications were determined by planning committee over a two-year period (2020 & 2021). Other Kent local planning authorities were also contacted to gain a fuller understanding of how their schemes of delegation were currently operating.

2.6 The review of committee decisions from the previous 2 years confirmed:

- (a) Committee considered a total of 109 cases.
- (b) Of these, 18% were referred to committee based on in-and-around 6 contrary representations being received, increasing to 37% accounting for where contrary representations were up to 9.
- (c) While member call-in requests were made on several applications, only 3% were determined by committee solely based on a member call-in.
- (d) 87% of planning committee decisions were decided in accordance with the officer recommendation, increasing to 94% for a few cases that were initially deferred by committee for further details/information and reported back for decision.
- (e) Of the cases considered by planning committee:
 - (i) 12% were for household planning applications;
 - (ii) 59% were predominately minor applications (above householder but below 'major' level), including some miscellaneous others; and
 - (iii) 29% were for major planning applications.

2.7 The above shows that more than a third of all applications reported to committee were due to between 6 and 9 contrary representations being received. These findings give some credence to the concerns outlined at 2.4(b). One in eight applications reported were householder proposals.

2.8 Comparing schemes of delegation across Kent authorities, Dover had 96% of planning application decisions delegated to officers. This was higher than two authorities but lower than seven, with one authority achieving 99%. Other findings include:

- (a) The use of the 'number of contrary representations' approach did not appear to be favoured by other Councils, with only two others using it in one form or another.
- (b) The use of 'thresholds' to exclude certain types of applications being reported to committee are operated by those authorities with the highest % of

applications determined under delegated powers. The thresholds vary between these authorities, with one excluding applications up to 20 dwellings from committee, although all excluded small-scale applications such as householder proposal.

- (c) Some schemes give authority to the Head of Service to determine whether an application should be referred to committee based on whether it has received 'significant objections' or is considered to be of sufficient importance to warrant member consideration.
- (d) Member call-ins are operated by all authorities, although some have additional requirements e.g. (i) requiring that the member calling-in the application attend committee to address the issues they've raised or (ii) that a call-in is only agreed where the application is judged to raise "issues of significant local importance"; suggesting a role for the Head of Service and/or the Planning Chairman in determining when this criteria was met.

3. Identification of Options

- 3.1 In carrying out the review and making recommendations, it is considered important that any revised scheme be simple to operate and as transparent as possible; making it clear to applicants and the public why a particular application has/has not been reported to committee. For this reason, it is considered preferable to steer away from referral criteria that rely solely on the judgement of an individual, which the examples at 2.8(c) and (d)(ii) above are felt to do.
- 3.2 In view of the delays experienced with reporting some applications to planning committee and the need to maintain and enhance the speed of decision making, it is also important that the overall number of applications reported to committee be reduced - which might be an inevitable consequence if some smaller cases are no longer reported – and for the reasons given at 2.4 (f), this would also assist with the efficient running of the service. Based on the foregoing, a target of around 98% delegated decisions is preferable and would also be consistent with practice elsewhere. Only time will tell whether any modifications to the scheme will meet the 98% target. Regarding less applications being reported to committee, it will be noted from the analysis of the 2020/2021 cases (see 2.6(e) above), that the committee agreed with the vast majority of officer recommendations. This hopefully gives assurance that increasing delegated authority to officers would not necessarily lead to decisions out-of-step with members' views.
- 3.3 The use of thresholds (i.e., the identification of a scale of development above which an application should usually be reported to committee) is felt to be a better alternative to relying solely on the number of contrary representations method, which has been largely set aside by authorities as the basis of their delegation schemes. What an appropriate threshold would be can be a matter for reasonable debate, however the recommendation before members is that the threshold be set at 'major planning applications'; a major application being more than 10 dwellings or more than 1000m² of non-residential floor space. This threshold has the benefit of being a nationally recognised categorisation¹. The threshold is therefore familiar to DM practitioners, including professional agents and others.
- 3.4 As a qualification to the above, it is recognised that under the current scheme of delegation, not all major planning applications have to be reported to planning committee, with many being uncontentious in nature and dealt with as such under

¹ Major development is defined in Government Planning Regulations (Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015).

powers delegated to officers. Reporting all major applications to committee therefore would be arguably unnecessary and potentially counter-productive to the aim of reducing the number of cases heard by committee and focusing committee's attention on the more challenging cases. For this reason, it is recommended that the 'number of contrary representations' model be used to 'screen out' non-contentious major applications with only major applications receiving 21 or more contrary representations being automatically referred. Based on experience, this figure is likely to represent a significant proportion of local interest, beyond immediate or adjoining neighbours, and is considered to be a reasonable bar to convey a level of public interest requiring involvement by planning committee.

- 3.5 Fundamental to these proposals is the maintenance of a committee referral under a member call-in. This in effect provides a catch-all for any other planning application (major or otherwise) that a member feels raises matters of such importance/local interest to warrant consideration by planning committee. It is possible that this route for referral could come under some initial pressure from supporters of/objectors to non-major scale planning applications.
- 3.6 Therefore, to ensure the call-in operates robustly, and in line with practice elsewhere, it is considered that a member deciding to call-in an application, in addition to citing planning reasons for doing so in writing (as at present), should also attend committee to address the issues they have raised (or, if this is not possible, provide a representative to do this on their behalf).
- 3.7 It should also be necessary for call-in requests to be screened by the Head of Service, in consultation with the Chairman of the Planning Committee, in accordance with criteria that ensures the call-in route operates in support of applications that warrant consideration by the committee. The modifications proposed in this report might result in additional call-in requests which would arguably strengthen the connection between planning and the democratic process.

4. Evaluation of Options

- 4.1 **Maintain the current Scheme of Delegation - Not recommended** for the reasons set out in this report, suggesting that the '6 contrary representations' method is now outdated and unreliable as a means of identifying the most important/contentious applications, from a public interest perspective. In particular, the method is likely encouraging the referral of smaller-scale applications that can safely be determined under delegated powers. The scheme also involves departmental resources being expended inefficiently, with smaller cases being prepared/presented for committee. By adding to the overall number of applications being referred, it also results in delays in the throughput of applications to committee generally and the speed of decision making.
- 4.2 **Increase the number of contrary representations required to trigger a referral to committee from the current 6 – Not recommended.** Experience has shown that the operation of a referral process on this basis alone is likely to simply result in more of the required number of letters being submitted by enthusiastic opponents/supporters of a development, with the drawbacks of the current scheme of delegation persisting.
- 4.3 **Change the current scheme of delegation as set out in this report - Recommended:**
 - (a) Apply a threshold meaning that only 'major planning applications' on which 21 or more contrary representations have been received are automatically referred to planning committee.
 - (b) Maintain the operation of the member call-in, with a requirement that:

- (i) planning reasons for the call-in are provided in writing (as present);
 - (ii) the Head of Service, in consultation with the Chairman of the Planning Committee, determines whether the application should be called-in on the basis of the criteria listed at Appendix 2 of this report; and
 - (iii) the member attend committee to address the issues raised in the call-in (or otherwise provide a representative to do so on their behalf).
 - (c) Amend the Constitution to reflect the above changes as outlined at Appendix 3.
- 4.4 If 4.3 is agreed, it is recommended that the operation of the revised scheme of delegation be monitored over a period of 2 years to evaluate its effectiveness.

5. Resource Implications

- 5.1 The implementation of this recommendation will enhance the efficient running of the Development Management service. By limiting the number of planning applications reported to committee to those raising matters of genuine public interest, it will reduce the amount of resource needed to draft/scrutinise committee reports, prepare presentations and attend the committee meeting and pre-meeting. This resource can be redirected to support other aspects of the DM service.

6. Climate Change and Environmental Implications

- 6.1 Allowing more focus/resources to be placed on other aspects of the DM service has the potential to enhance the quality of planning outcomes relative to these objectives.

7. Corporate Implications

- 7.1 Comment from the Section 151 Officer: Accountancy have been consulted and have no further comments. (MR)
- 7.2 Comment from the Principal Lawyer - Planning: The Principal Lawyer – Planning has been consulted in the production of this report and has no further comment to make.
- 7.3 Comment from the Equalities Officer: This report does not specifically highlight any equality implications, however in discharging their duties members are required to comply with the public sector equality duty as set out in Section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/section/149>.
- 7.4 Other Officers (as appropriate): no comments.

8. Appendices

Appendix 1 – Existing Scheme of Delegation

Appendix 2 – Review of committee call-in requests by Head of Service (in consultation with the Chairman of Planning Committee)

Appendix 3 – Proposed amendments to Constitution

9. **Background Papers**

Constitution of the Council.

Department for Levelling Up, Housing and Communities, Live tables on planning application statistics. Table P134 - District planning authorities: applications received, decided, granted and delegated and environmental statements received, by local planning authority, England - Year ending March 2022.

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