

REVISED REPORT SEEKING DECISION ON AN URGENT MATTER

PLANNING DURING THE CORONAVIRUS CRISIS: ADDITIONAL DELEGATIONS to the Strategic Development and Delivery Manager and the Development Management Manager, and to the Head of Planning and Development

Report to: Chief Executive

Copies for formal Consultation to: Chairman of the Planning Committee; Corporate Director of Law and Governance and Monitoring Officer; Director of Finance and Economy and Section 151 Officer.

Copies for Information to: The Leader of the Council; Portfolio-Holder for Planning and Development; Vice-Chairman of the Planning Committee and Deputy Portfolio-Holder for Planning and Development; Head of Planning and Development; Spatial Planning Manager; Development Management Manager; Team Leader – Strategic Applications; Senior Planning and Development Solicitor; Member Services Liaison Manager; Member Services Manager (Operational).

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INTRODUCTION

H.M. Government’s Chief Planner’s last “Planning Update Letter”, dated March 2020, was issued to local planning authorities on 23 March. Under the heading, “COVID-19 Advice”, the Chief Planner wrote:-

“... It is important that authorities continue to provide the best service possible in these stretching times and **prioritise decision-making to ensure the planning system continues to function**, especially where this will support the local economy.

“We ask you to take an innovative approach, using all options available to you to continue your service. We recognise that face-to-face events and meetings may have to be cancelled but we encourage you to explore every opportunity to use technology to ensure that discussions and consultations can go ahead. **We also encourage you to consider delegating committee decisions where appropriate.** ...

“**We encourage you to be pragmatic** and continue, as much as possible, to work proactively with applicants and others...” [emboldening added]

IMPLEMENTING ADDITIONAL DELEGATIONS IN ASHFORD BOROUGH

Following the Chief Planner's letter, a conference call was held between Planning and Legal managers on 24 March, to discuss the introduction of additional delegations to planning officers. I then prepared a paper, which formed the basis of a lengthy conference call (circa 100 minutes) on 30 March between Planning and Legal managers, the Chief Executive, the Leader of the Council, the Chairman of the Planning Committee and the Portfolio-Holder for Planning and Development.

The first conference call identified for possible delegation to Officers, during the Coronavirus crisis, decisions on six matters which are currently decided by the Planning Committee. During the second conference call, with the three Members mentioned above, four (out of the six) were agreed to go forward (with minor clarifications, which I have incorporated below).

On 7 April, I circulated the original version of this report, recommending that new delegations be granted in respect of decisions on those four matters. Responses from Members identified concerns regarding delegating to Officers decisions on one of those four matters, and the Chief Executive then indicated that this would not, therefore, proceed at this time. Accordingly, my 7 April report is now withdrawn, and the following three matters are now recommended to go forward:-

1. **Reserved Matters Applications for approval of Appearance, Layout and Scale.** (Reserved Matters Applications for approval of Access and Landscaping are already delegated.) At present, a full report on Appearance, Layout and Scale applications has to be written by Officers and circulated to Committee Members, to ascertain whether at least 6 of them wish the application to be reported to Committee (which has virtually never happened). Decisions on these applications would be **delegated to the Strategic Development and Delivery Manager and the Development Management Manager**, in the same way that applications for approval of Access and Landscaping are currently delegated.
2. **Applications to remove or vary a Planning Condition on a previous Permission** (known as **Section 73 applications**). Section 73 applications for development already approved by the Committee were previously delegated to Officers, but this delegation was deleted on a general reorganisation of the delegations, and not reinstated thereafter. Decisions on these applications would be **delegated to the Strategic Development and Delivery Manager and the Development Management Manager**, in the same way that applications for approval of Access and Landscaping are currently delegated.
3. [Not used]
4. **Confirming Tree Preservation Orders following objection(s) being received** to them when first made by Officers. This procedure was introduced

in order to meet human rights and fairness requirements, whereby it is considered inappropriate for Officers who make an Order to then confirm it after formal objection has been made. It is proposed that confirmation of Tree Preservation Orders after objection(s) would be **delegated to the Head of Planning and Development to determine, after consultation with the Ward Member**. This would be on the proviso that the Head of Planning and Development would not have any involvement in the original consideration and making of Orders by the Strategic Development and Delivery Manager or the Development Management Manager; if for any reason, the Head of Planning and Development had any involvement, confirmation would continue to be a Committee decision.

The above are referred to in the remainder of this **revised** report as “**the Three Matters**”.

Delegating decisions on the **Three** Matters to Officers as above would ease decision-making delays, which will otherwise result from the recent cancellation of Planning Committee meetings, and allow future “virtual meetings” of the Planning Committee to focus their time and resources on the most strategic and important applications.

In all **3** cases, the following will remain:-

- (a) The existing power for the Strategic Development and Delivery Manager or the Development Management Manager to report to Committee any decision that they consider to be **sensitive** such that it should be decided by the Committee (doubtless, they would normally consult the Head of Planning and Development before exercising this power);
- and
- (b) The existing power for the **Portfolio-Holder for Planning and Development** to refer applications to the Committee, on the grounds that he/she considers that the application should be considered by the Committee. (It is important that the Portfolio-Holder does not express firm views on applications in advance of any Committee meeting, to avoid any perception of predetermination.)

All Full, Outline and Hybrid planning applications for major development, falling in the existing categories where Planning Committee decisions are required, would continue to be reported to the Committee as now.

COMMENCEMENT, DURATION AND REVIEW OF ADDITIONAL DELEGATIONS

Following further consideration of the backlog of current applications, and in order to have the maximum effect on that backlog, it is now proposed that the **three** additional delegations will come into force **immediately** for all **pending** applications (**whenever received**), and all Tree Preservation Orders (**whenever made**), on the date of a decision by the Chief Executive on this revised report.

[This section redacted to prevent disclosure of confidential legal and business advice, protected from publication by legal professional privilege and confidentiality.]

It is very difficult to know the length of time the Coronavirus crisis will last. The Leader of the Council, the Chairman of the Planning Committee and the Portfolio-Holder for Planning and Development were content, during the second conference call, for the additional delegations to be **introduced for a short-term period of six months**.

This is consistent with the advice of H.M. Government's Deputy Chief Medical Officer on 29 March, to the effect that it could be six months before life returns to normal, with a variety of extraordinary measures lasting for potentially that period of time.

During that six-month period, there will be a review of the operation of the additional delegations, in order for a decision to be made as to whether they should be extended, in either the same or a modified form, or not.

The three Members on the second conference call recommended that the Chief Executive should proceed now to take a delegated decision on this basis.

CONSTITUTIONAL AND PROCEDURAL MATTERS

In terms of the Council's Constitution, the **Three** Matters are all Non-Executive functions, and any decision to delegate to Officers decision-making on the **Three** Matters is a Non-Executive question or matter within the powers of the Council.

The Chief Executive's delegation to determine Urgent Non-Executive questions or matters within the powers of the Council is in Part 3 of the Constitution, Appendix 5, para. 4.10, and (so far as relevant to this report) runs as follows:-

“Civil Emergencies and/or Urgent Matters

“4.10 To decide whether any ... Non-Executive function, question or matter within the powers or duties of the ... Council ... is urgent and ... a decision must be made before the next scheduled meeting of the ... Council ... and ... if the Chief Executive is satisfied that it is not expedient, practicable or necessary in the circumstances to convene a special meeting of the ... Council ... then:-

“The Chief Executive shall have the power ... to determine the question or matter ... in the name of and without further reference to the ... Council

“The Exercise by the Chief Executive ... of any powers under this delegation shall be subject to the following conditions:-

“(1) that the determination of the question or other matter ... is capable of determination under law in this manner;

“(2) the Chief Executive, ... before making a decision, shall where practical, consult with ... the Chairman of the appropriate Committee in relation to a Non-Executive function;

“(3) the Chief Executive, ... before making a decision shall consult with the Corporate Director (Law and Governance) and Monitoring Officer, the Director of Finance and Economy and Section 151 Officer or their nominated deputy;

“(4) a record of all decisions made ..., together with the consultations referred to in (2) and (3) above shall be made by the Chief Executive ...; and

“(5) any decisions made ... under this provision shall ... be reported to the next scheduled meeting of the ... Council ... which would otherwise have dealt with the question or matter.”

To facilitate the consultation required by paras. (2) and (3) above, this **revised** report is copied to the Chairman of the Planning Committee, the Corporate Director (Law and Governance) and Monitoring Officer and the Director of Finance and Economy and Section 151 Officer, and they are invited to express any views they may have to the Chief Executive.

In terms of urgency, there are currently no scheduled meetings of the Council before 21 May. And in the current circumstances, it is clearly not expedient, practicable or necessary to convene a special meeting of the Council to consider delegating decisions upon the **Three** Matters.

To summon Members to attend such a meeting, at which it would not be possible to maintain social distancing in line with advice from H.M. Government and Public Health England, would be contrary to clear expected standards of public health. Many Members, too, are in the category of persons called “vulnerable” by H.M. Government, and any requirement that were placed upon them to leave their homes should be very limited and only where necessary for their work.

However, as the Chief Planner’s letter pointed out, the current circumstances also require the Council to continue to provide the best planning service possible, prioritise decision-making, and use innovative approaches. At a time of reduced planning officer resources due to sickness, self-isolation, and the need to work at home as much as possible, special control is needed over the number of reports required to Planning Committee, in order to free up scarce resources and enable decision-making to continue. Delegating more decision-making is an important part of this.

Although new legislation and regulations came into force on 4 April which will allow the Council – and the Planning Committee - to hold legally valid “virtual meetings” in due course, this must be implemented by changing the Council’s procedures. Once this has been done, the Planning Committee may meet for the first time since 19 February, but there is a very significant backlog of matters with which it must deal when it meets “virtually”. Moreover, the length of time that those operating, chairing and “attending” a “virtual meeting” can be reasonably expected to use technology (especially VDUs) to stay in contact with a remote “meeting” will be more limited than with a traditional meeting, and this too means that the Committee’s “virtual meetings” must concentrate their time on the most important or major matters, and not be distracted by other matters wherever possible.

There have already been two abandoned Planning Committee meetings (on 18 and 25 March), and in all the circumstances, it is clearly reasonable to regard a decision on delegating decisions on the **Three** Matters to Officers as urgent, in order to enable them to take more decisions themselves as soon as possible.

Under the Constitution, subject to the above, an urgent decision can be taken by the Chief Executive, who must bring independent judgement to bear upon it and record the decision made and the reasons for it, in order that her decision can be reported to the next meeting of the Council (whenever convened) as is required.

In terms of Equalities and Human Rights, the proposals relate only to the procedures and level of decision-making within the Council, contain appropriate safeguards, and do not recognisably interfere with human rights or negatively impact upon persons with protected characteristics.

RECOMMENDATION

Subject to any views which may be expressed by the Chairman of the Planning Committee, the Corporate Director (Law and Governance) and Monitoring Officer and the Director of Finance and Economy and Section 151 Officer,

It is recommended that the Chief Executive, having formally consulted the Chairman of the Planning Committee, the Corporate Director (Law and Governance) and Monitoring Officer, and the Director of Finance and Economy and Section 151 Officer, **determine that:-**

- (i) **the Council grant the delegations to Officers proposed in this revised report in respect of the **Three** Matters for a period of six months, with immediate effect,** and
- (ii) there be a review of the operation of the **three** additional delegations within that period of 6 months.