

**Agenda Item No:** 4  
**Report To:** Selection and Constitutional Review Committee  
**Date of Meeting:** 1 October 2020



**Report Title:** Proposed Changes to the Scheme of Delegations to Officers regarding Planning and Development decisions

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**Portfolio Holder** Cllr. Neil Shorter  
**Portfolio Holder for:** Planning and Development

**Summary:** This report seeks to:

- (a) retain delegations granted under Urgency powers at the start of the Coronavirus crisis in relation to Reserved Matters applications, Section 73 applications and Tree Preservation Orders;
- (b) extend the scope of existing delegations in relation to Major planning applications; and
- (c) add the Head of Planning and Development to all the delegations related to the Planning and Development Service.

**Recommendations:** The Selection and Constitutional Review Committee is asked to recommend to Council:-

- (a) the increased delegations to Officers described in paragraphs 13, 18-20, and 23 of this report;
- (b) the clarifications to the Member Call-in safeguards described in paragraphs 16 and 21 of this report.

**Policy Overview:** The Constitution sets out the procedures by which the Council's business is conducted, and includes the Scheme of Delegations to Officers (Part 3, Appendix 5). One of the purposes of the Constitution is to "enable decisions to be taken efficiently and effectively" (Art. 1.02.5). The Monitoring Officer has a duty to review the Constitution and keep it up to date, and this includes ensuring that the Constitution provides an efficient and legally-sound framework for the conduct of Council business.

**Financial Implications:** The ability to make decisions in an effective and efficient manner contributes to sound financial management and the minimisation of risks to the Council's financial position. Relevant risks are explained in the report.

**Legal Implications:** Section 1 of the Growth and Infrastructure Act 2013 inserted

sections 62A and 62B into the Town and Country Planning Act 1990. These give the Secretary of State the legal power to determine that a local planning authority is inadequately performing its functions in determining applications, and then to 'designate' that authority for specific types of planning applications. Following 'designation', those types of applications can be made direct to the Secretary of State (instead of to the authority in the normal way).

The proposals seek to ensure that the Council avoids this. The Secretary of State's criteria for 'designation' are set out in MHCLG's publication, "Improving Planning Performance: Criteria for Designation (revised 2018)".

**Equalities Impact Assessment:**

The recommendations relate only to the procedures and level of decision-making within the Council, contain appropriate safeguards, and do not recognisably detrimentally affect persons with protected characteristics.

**Data Protection Impact Assessment:**

No new material implications with regard to personal data.

**Risk Assessment:**

The risks of not extending the delegations as recommended are explained in the report.

Safeguards are recommended, including Member 'call-in' and Member consultation procedures.

**Sustainability Implications:**

Fewer applications being reported to the Planning Committee will reduce the use of resources such as paper, inks, electricity and postage, and may reduce the amount of travel to and from the Civic Centre.

**Other Material Implications:**

None

**Exempt from Publication:**

No

**Background Papers:**

Planning Advisory Service (PAS) Review Report to Cabinet 25 June 2020, and its Background Paper, "Planning Advisory Service – Ashford Planning and Development Management Service Review – January 2020".

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## **Introduction and Background**

1. The Council's Constitution sets out the legal framework within which the Council operates. Its purposes include enabling decisions to be taken efficiently and effectively, and ensuring that those responsible for decision-making are clearly identifiable to local people.
2. The Constitution's Scheme of Delegations sets out responsibilities for the determination of particular types of planning applications. Under this, Officers have delegated authority to determine all applications for planning permission and other approvals and consents, apart from those that fall within the exceptions set out in the Scheme, which must be referred to the Planning Committee.
3. The need for improvements to the efficiency and effectiveness of the Council's procedures arose from two sources:-

(a) The Planning Advisory Service (PAS) Review Report, in January 2020.

The PAS Review Report highlighted, as a specific recommendation, the need to review the Scheme of Delegations, in order to ensure that applications of an appropriate nature only are determined by the Planning Committee.

The PAS Review Report was reported to Cabinet on 25 June 2020. The Cabinet resolved that an action plan be implemented to address the issues and develop and implement the recommendations in the PAS Review Report (with one exception, which this report explains in para. 14-15 below).

(b) The Covid-19 Coronavirus crisis.

In March 2020, the public health risks from the coronavirus pandemic meant it was no longer practicable or prudent to continue making decisions through Committee meetings at the Civic Centre. Nevertheless, the Government's then Chief Planner urged local planning authorities to "prioritise decision-making to ensure the planning system continues to function ... using all options available." He specifically asked authorities to "consider delegating committee decisions where appropriate".

In order to ease decision-making delays, and allow the Planning Committee to focus its time and resources on the most strategic and important applications, on 8 April 2020 the Chief Executive, acting on her delegated authority for Urgent Matters, created 3 Additional Delegations for 6 months only, as follows:-

- (i) Reserved Matters Applications for approval of Appearance, Layout and Scale - delegated to the Strategic Development and Delivery

Manager and the Development Management Manager. (Reserved Matters Applications for approval of Access and Landscaping were already delegated to those officers.)

- (ii) Applications to remove or vary a Planning Condition on a previous Permission (known as Section 73 applications) - delegated to the Strategic Development and Delivery Manager and the Development Management Manager.
- (iii) Confirmation of Tree Preservation Orders (TPO) following objection(s) being received to them when first made by Officers - delegated to the Head of Planning and Development, after consultation with the Ward Member, provided that the Head of Planning and Development had not had any involvement in the original consideration and making of the TPO. (Otherwise, confirmation would continue to be a Committee decision.)

These 3 Additional Delegations are subject to the following three existing safeguards:-

- (A) the Strategic Development and Delivery Manager or the Development Management Manager can report to Committee any application or TPO confirmation that they consider to be sensitive such that it should be decided by the Committee;
- (B) the Portfolio-Holder for Planning and Development can refer any application or TPO confirmation to the Committee, if he/she considers that it should be considered by the Committee;
- (C) a Ward Member can refer any application (but not a TPO confirmation) to the Committee, if he/she considers that it raises issues of significant local importance.

These Delegations were noted and ratified by the Full Council on 16 July 2020 as required by the Constitution, Part 3, Appendix 5, para. 4.10(5)(ii). They will expire after 7 October 2020.

- 4. In the light of the above, this report is being brought before the Committee by the Interim Head of Planning and Development to recommend ways to continue to ensure that planning decisions are taken efficiently and effectively.

#### **Major Applications: Delegations and Committee**

- 5. Major applications are defined as those for over 10 Housing units; sites over 0.5 ha. which may have over 10 Housing units; proposals for 1,000 sq.m. or more of buildings; or any proposal on more than 1 ha. of land.
- 6. There are currently over 50 outstanding Major applications (excluding those which already have Resolutions to Grant Permission subject to a section 106 agreement, and also excluding Reserved Matters Applications) that will need to go before the Committee under the current Scheme of Delegations.

7. This large number arises because at present, almost all Major applications are required to go to Committee - even those that are aligned with representations, Ward Member and Parish/Community views. The exceptions are: Reserved Matters and Section 73 applications (currently delegated only due to the Coronavirus crisis, as explained above); some applications on large site areas (e.g. agricultural, horse paddocks); and some commercial applications (which are subject to Committee Members Consultation/Call-in procedure, explained further in para. 20 below).
8. Currently, the Committee is considering 4-8 applications per Meeting; many of these are non-Major applications. Therefore, it is apparent that under the current Major applications delegations, taking into account the number of non-Major applications going to Committee, it will be very difficult to work through the current Major applications backlog in a timely manner. Therefore, it will be very difficult to reduce the current level of backlog, which will not serve the customer well (applicants, neighbours, the community), and may potentially result in designation.

### **PAS Review and Designation**

9. The PAS Planning Review Report, reported to the June 2020 Cabinet, identified that the Council is close to the Government's performance threshold for Major applications. Planning delegations and Committee reports were identified as areas for action to improve the speed of planning decisions.
10. The Council needs to significantly improve the speed of determination in relation to Major applications to avoid designation. The Council would be designated if it fails to maintain its Major planning applications statistics above the Government designation level of 60% (over a two-year period). If the Council were designated, an applicant could choose to submit an application to the Council or to the Secretary of State.

### **Financial / resource implications & key risks:**

11. Designation can result in the Council losing the ability to decide Major applications for itself; and also losing Major planning application fee income. Designation can also have an adverse impact on staffing (recruitment and retention) and morale within the service.
12. The Planning Advisory Service has identified that, on average, taking an application to Planning Committee for determination costs ten times as much as making a delegated decision. These costs are related to the resources required for the production of the report and its presentation, but also to all those that are involved in 'serving' the committee and the committee processes (e.g. Legal and Democracy, IT, Facilities and other services). A significant element of the cost is related to the time taken by planning officers to write and present the reports and prepare for committee. This is not solely an issue of cost but one of resource availability. Members may have a desire to address the Major application backlog, for example through doubling the number of committee meetings, however this can have a seriously detrimental effect on the productivity of the planning service, as there is a feeling of perpetual committee agenda closing dates and committee preparation and

attendance, which collide/overlap, and make workload management very difficult.

## **Proposals**

### **Continuation of 3 Additional (Urgency) Delegations**

13. The 3 Additional Delegations granted under Urgency powers, set out in para. 3(b) above, will expire after 7 October 2020. It is recommended that they be continued permanently, in order to contribute to the greater efficiency of the Planning and Development Service and ability to meet its performance targets. They will continue to be subject to the safeguards listed at (A), (B) and (C) in para. 3(b).
14. One of the other recommendations of the PAS Review Report was that all requests by Ward Members for referral of an application to Committee should be for a stated planning reason. This is not required by the current Scheme of Delegations, which merely requires Ward Members to state that they consider the application “raises issues of significant local importance”. The existing wording was partly designed to protect Ward Members from being required to state a specific reason for call-in requests, which in some cases in the past had led Ward Members to set out detailed concerns with applications. Then, when the application came to the Committee, if the Ward Member were a member of the Committee on that day, questions were sometimes raised about whether they retained an open mind on the application. This matter is discussed in the Council’s Good Practice Protocol for Councillors Dealing with Planning Matters.
15. This matter was discussed and commented upon by members of the Cabinet at its 25 June meeting when the PAS Review Report was considered, and after further consideration, it is not now proposed to change the current Scheme of Delegations in this regard. Therefore, a planning reason will not need to be stated, and the existing form of words required of a Ward Member to call in an application will remain.
16. Nevertheless, it has happened in the past that a Ward Member has called in an application, but by the time it is reported to Committee that Member is no longer in office, and/or the application has been amended such that any issue that caused significant local concern has been overcome. Therefore, in order to clarify and facilitate the operation of the Ward Member Call-in safeguard, it is proposed that a Ward Member’s request to Call in can be withdrawn if appropriate, and if the Ward Member has changed then this right will pass to the sitting Ward Member. This will ensure that the Committee does not need to consider a report that is no longer required.

### **Additional Delegations - Major Planning Applications**

17. Increased delegation of Major applications is being sought in order to:
  - address the issues raised in the PAS report;
  - avoid designation under the Government’s performance regime;
  - improve the efficiency of the Planning Service in terms of determining Major applications; and
  - address the backlog of Major applications.

18. The increased delegations sought are:-
- Major applications on sites allocated in the Ashford Local Plan 2030;
  - Major applications for 50 Housing units or less;
  - Major applications for non-residential developments, and Outline applications, up to and including the floorspace/site area thresholds shown in the Appendix to this report.
19. These increased delegations will all be subject to the safeguards listed at (A), (B) and (C) in para. 3(b) above.
20. Additionally, these increased delegations will also be subject to the Committee Members Consultation/Call-in procedure, which currently applies to a few types of applications only. Under the Committee Members Consultation/Call-in procedure, when it is proposed to approve a relevant application, a delegated report is emailed to all Committee Members, and any 6 or more members of the Planning Committee can request by email that the determination of the application should be elevated to the Planning Committee.
21. In order to clarify and facilitate the operation of the Member Call-in safeguards for the Portfolio-Holder for Planning and Development, and any other Committee Member, it is proposed that any request to Call in can be withdrawn if appropriate (for example, if an application is amended). In the case of the Portfolio-Holder, if the Portfolio-Holder has changed then this right will pass to the new Portfolio-Holder. This will ensure that the Committee does not need to consider a report that is no longer required by the sitting Portfolio-Holder.

### **Additional Delegation to the Head of Planning and Development**

22. At present only the Development Management Manager and the Strategic Development and Delivery Manager have delegations, unless they are absent or unable to act, when the Head of Planning and Development has the delegations. This is a very unusual situation among local planning authorities, as normally the Head of Planning and Development would have the delegations, and would cascade delegations by way of authorisations to relevant more junior officers.
23. Therefore, the Head of Planning and Development requests that the Scheme of Delegations be expanded to retain the current delegations but allow the Head of Planning and Development to exercise any of them at any time. This would add greater flexibility and resilience to the Planning Service, and address the current anomaly.

### **Conclusion and Recommendation**

24. Following the PAS Review Report and the identified performance issues related to major planning applications, the Interim Head of Planning and Development, the Development Management Manager and the Strategic Development and Delivery Manager are seeking additional delegated powers in relation to the determination of applications. The proposed changes seek

to address the backlog and facilitate the determination of applications in a more timely manner, to serve all customers. The addition of the Head of Planning and Development to all Planning and Development delegations is sought to address the anomaly and to increase the resilience of the Service in relation to decision-making.

25. The Committee is asked to recommend to Council to agree the retention/extension of delegations identified in this report.

### **Portfolio Holder's Views**

26. Cllr Shorter: To follow

### **Contacts and Emails**

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## **APPENDIX**

### **Thresholds for the recommended new delegations for Major applications, subject to the Committee Members Consultation/Call-in procedure – underlined and in bold text**

(Paragraph 18, bullet points 2 and 3 refer)

(a) applications for planning permission for the provision of dwellinghouses where:

- (i) the number of dwellinghouses to be provided is **up to and including 50** ; or
- (ii) the development is to be carried out on a site having an area of **up to and including 2.5 hectares** and it is not known whether the development falls within paragraph (a) (i).

(b) applications for planning permission for the provision of a building or buildings of **up to and including 5000 sq metres floor space** where the proposed use of that building or one of them is for retail or hotel purposes.

(c) applications for planning permission for the provision of a building or buildings of **up to and including 5000 sq metres floor space** for commercial / employment use where it is proposed to refuse the application.

(d) applications for planning permission for the provision of a building or buildings of **up to 5000 sq metres floor space** where it is proposed to approve the application.