

9 June 2022

Report of	Assistant Director of Place and Client	Author	Karen Syrett ☎ 506477
Title	Changes to Planning Scheme of Delegation		
Wards affected	All		

1. Executive Summary

- 1.1 This report seeks to amend the scheme of delegation to allow certain additional application types to be determined by officers rather than considered by the Planning Committee.

2. Recommended Decision

- 2.1 The Committee are asked to agree the proposed changes to the scheme of delegation.

3. Reason for Recommended Decision

- 3.1 To allow Council decision making to continue in the most efficient manner whilst ensuring those applications where the Committee are not limited in their considerations and which are controversial or contrary to policy are determined in the public domain.

4. Alternative Options

- 4.1 The Committee could decide to change the proposed scheme of delegation.

5. Background Information

- 5.1 In March 2020 due to the Coronavirus pandemic and in response to Government advice on social distancing etc, the Council cancelled all scheduled formal decision-making meetings for the remainder of the 19/20 Municipal Year. However, it was recognised that it was important to ensure that the Council's ability to determine planning applications which would ordinarily have been considered by members of the Planning Committee could still function during this period. Accordingly, Interim Planning Arrangements were introduced with effect from 18 March 2020 following agreement by the Leader of the Council, Group Leaders and the Chair of the Planning Committee. These interim arrangements operated successfully until such time as meetings in person could be reinstated.
- 5.2 The changes to the scheme of delegation demonstrated that regular reviews should take place to ensure the Planning Committee can focus on applications considered to be controversial or contrary to policy, without being bogged down by applications that are better determined by officers. One way of achieving this is to increase the scheme of delegation.

5.3 The current scheme of delegation from the Planning Committee is as follows;

Delegated to Assistant Director for Place and Client Services;

1. The determination of all planning applications irrespective of scale and size (including changes of use and all applications for Listed Building Consent, Certificates of Lawfulness, applications for the determination as to whether prior approval is required, consent to display advertisements and other notifications) except any application:
 - a) significantly contrary to adopted policies or a departure from the development plan, and which is recommended for approval;
 - b) which any Ward Councillor requests in writing to the Assistant Director for Place and Client Services within 25 days of notification, should be subject of consideration by the Committee;
 - c) which constitutes a major application on which a material planning objection(s) has been received in the stipulated time span and the officer recommendation is to approve;
 - d) which constitutes a major application, that is recommended for approval and where a section 106 Agreement is required (excluding unilateral undertakings);
 - e) submitted by or on behalf of a Colchester Borough Council Councillor, Honorary Aldermen (or their spouse/partner) or by any Council officer (or their spouse/partner);
 - f) submitted by or on behalf of Colchester Borough Council (for clarity, this does not include applications made by other parties on land owned by the Council where the development is not by or on behalf of the Council).

5.4 In the past year there have been a number of applications referred to the Committee, where there is limited opportunity to influence the outcome because of national policies. This has proven to be frustrating for Councillors and the public alike and an example is the conversion of office buildings to residential use, in North Station Road.

5.5 National policies allow certain changes of use and works to take place under permitted development. In some instances, no application is required and in others "Prior Approval" is required. Prior approval means that a developer has to seek approval from the local planning authority that specified elements of the development are acceptable before work can proceed. The matters for prior approval vary depending on the type of development and these are set out in full in the relevant Parts in [Schedule 2 to the General Permitted Development Order](#). A local planning authority cannot consider any other matters when determining a prior approval application.

5.6 In the case of conversions from office to residential use the only determining factors are;

- the impact of development on transport and highways
- contamination risks on the site
- flooding risks on the site.

Issues such as loss of residential amenity cannot be a consideration in the determination of the application. Flood risk and contamination are factual and cannot be changed by discussion. Impact of a development on highways and transport can only justify a refusal where the impact is severe, in accordance with national policy. Essex County Council, as the highway authority, provide advice in relation to this aspect. There is therefore very little

that the Committee can actually influence. It is therefore suggested that applications for Prior Approval are delegated to Officers to make the decision.

- 5.7 Lawful Development Certificates are also currently subject to call in. These are legal applications – either something is permitted/lawful, or it is not – a discussion at committee cannot change the outcome. Unfortunately, if these types of application are called in, they can give objectors unrealistic hope that the decision can be changed. There have been examples where Members were not happy with a proposal but legally it was lawful and therefore their hands were tied. It is therefore recommended that all such applications are delegated to Officers to make the decision.
- 5.8 Permission in Principle is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for proposed development from the technical detail of the development. The permission in principle consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed.
- 5.9 The scope of permission in principle is limited to location, land use and amount of development. Issues relevant to these 'in principle' matters should be considered at the permission in principle stage. Other matters should be considered at the technical details consent stage. In addition, local authorities cannot list the information they require for applications for permission in principle in the same way they can for applications for planning permission.
- 5.10 A decision on whether to grant permission in principle to a site following a valid application must be made in accordance with relevant policies in the development plan unless there are material considerations, such as those in the National Planning Policy Framework and national guidance, which indicate otherwise. It is therefore recommended that applications for Permission in Principle (first stage), is delegated to officers.
- 5.11 Whilst the interim scheme of delegation was in operation, it became apparent that some applications were being referred to committee despite there being no objections simply because a S106 agreement was required. The interim arrangements introduced a change whereby major applications, that are recommended for approval and where a section 106 Agreement is required would only be referred to Committee if there was a dispute about the detail of the S106 agreement. It is recommended that this approach is reinstated but with the proviso that the S106 heads of terms must be policy compliant. If the application is significantly contrary to adopted policies or a departure from the development plan, it would be referred to the Planning Committee if it was recommended for approval.
- 5.12 As currently written the scheme of delegation requires all major applications to be referred to committee if there is just one objection which raises a material consideration. There is no distinction between those raising an objection which is not relevant or can be overcome. It is therefore proposed that such applications are delegated to officers who will refer to the committee if they think appropriate or where there is a Call-In or a dispute with the S106.

- 5.13 In light of the details above and recent experience it is proposed to revise the scheme of delegation from Planning Committee to the following;

Delegated to Assistant Director for Place and Client Services;

1. The determination of all applications for the determination as to whether prior approval is required.
2. The determination of all Lawful Development Certificates.
3. The determination of all applications for Permission in Principle (first stage)
4. The determination of all planning applications irrespective of scale and size (including changes of use and all applications for Listed Building Consent, Certificates of Lawfulness, consent to display advertisements and other notifications) except any application which is:
 - a) significantly contrary to adopted policies or a departure from the development plan, and which is recommended for approval;
 - b) which any Ward Councillor requests in writing to the Assistant Director for Place and Client Services within 25 days of notification, should be subject of consideration by the Committee;
 - c) which constitutes a major application, that is recommended for approval and where a section 106 Agreement is required (excluding unilateral undertakings) and the terms of that agreement are in dispute;
 - d) submitted by or on behalf of a Colchester Borough Council Councillor, Honorary Aldermen (or their spouse/partner) or by any Council officer (or their spouse/partner);
 - e) submitted by or on behalf of Colchester Borough Council (for clarity, this does not include applications made by other parties on land owned by the Council where the development is not by or on behalf of the Council).

6. Standard References

- 6.1 There are no particular references to the Strategic Plan; consultation or publicity considerations or financial; community safety; equality, diversity and human rights implications, or health and safety implications.

7. Risk Management Implications

- 7.1 The proposed scheme of delegation is intended to improve decision making by ensuring the Planning Committee can concentrate on matters that are of most importance.

8. Environmental and Sustainability Implications

- 8.1 The purpose of the planning system is to contribute to the achievement of sustainable development.

