

Amendments to the Head of Planning and Building's Delegations

Report of the Democracy and Governance Portfolio Holder

Recommended:

That the scheme of delegation to the Head of Planning and Building be amended as shown in the Annex to the report.

SUMMARY:

- It is proposed that the Scheme of Delegations for officers be amended as set out in the report.

1 Introduction

- 1.1 The Council's Constitution underpins all of the Council's areas of activity. Ensuring it reflects current legislation and working practices is important.

2 Background

- 2.1 Since the Constitution's adoption, it has remained under review in accordance with Section 37 of the Local Government Act 2000.
- 2.2 A further change is recommended in relation to the scheme of delegation to the officers.

Head of Planning and Building

- 2.3 Under the delegations to the Head of Planning and Building, paragraph 1(b), Members are entitled to request, with reasons, that any application (excluding notifications) be brought before the relevant Planning Committee for determination, rather than being dealt with by the Head of Planning and Building under delegated powers. The term "application" under para. 1(b) is all embracing, and includes not only planning applications – whose merits Members may well wish to see discussed at Committee – but also applications for lawful development certificates, where the planning merits of the development are irrelevant.
- 2.4 An application for a lawful development certificate ("LDC") simply poses the question, whether any particular use of land which has been instituted, or operations carried out on land, are lawful, or whether any use of land, or operations on land, would be lawful, if carried out in the manner described in the application.

- 2.5 Such matters must be determined by the Local Planning Authority (LPA) purely on the basis of the factual evidence available to it, and applying any relevant law. By way of example, a use of land will be lawful if instituted more than ten years prior to the date of an LDC application, and provided that the use has subsisted ever since. So, the job of the LPA in such cases is to examine whether there is evidence before it that the use has subsisted throughout the relevant period and, if it so concludes on the balance of probabilities (the relevant standard of proof), then it must issue the certificate.
- 2.6 It can, therefore, be clearly seen that the planning merits of the development are wholly irrelevant; the question of whether or not the development is harmful, or indeed, to the contrary, simply does not arise, and plays no part in the determination of the matter.
- 2.7 In the circumstances, it is considered that LDC applications should not be capable of being brought to Committee through Member referral because:-
- a) planning merits are not open for discussion. Notwithstanding, if such applications are before Committee, there will be an inevitable temptation to raise merits based arguments, and the public attending may find it difficult to understand why they should not be.
 - b) only facts and law to be considered. Assessing the factual evidence and applying the relevant law are considered to be matters best left for the professional Officers. Evidence may, on occasion, be very extensive, and sometimes sensitive in nature.
 - c) It is difficult to see how Members are likely to be able adequately to examine and evaluate evidence in relation to an LDC application within the rules for the conduct of Planning Committees, which are designed to facilitate debate on merits-based arguments. They are not considered to be an appropriate forum within which to allow examination and evaluation of evidence to take place.

Hence, the recommendation set out above.

3 Corporate Objectives and Priorities

- 3.1 As set out in Article 14 of the Constitution the Monitoring Officer has a duty to monitor and review the operation of the Constitution and ensure that the aims and principles of the Constitution are effective.
- 3.2 Maintaining and improving the Constitution to reflect current legislation and the broader agenda of local government is essential in order to deliver effective and lawful decisions in the day to day implementation of the Corporate Plan.

4 Options

4.1 Options for Recommendations.

4.1.1 Option 1 is the recommended Option for the reasons set out in paragraph 2.2 above.

4.1.2 Option 2 is not to make the change recommended.

5 Option Appraisal

5.1 Option Appraisal

5.1.1 Option 1 is the recommended option and results in the scheme of delegations to officers in relation to the Head of Planning and Building being updated to reflect current practice and ensure the efficient and effective management of Council services.

5.1.2 Option 2 is not recommended. Not approved the proposed changes would result in a less effective scheme of delegation to officers.

6 Risk Management

6.1 A Risk Management questionnaire has been completed and indicates this report does not require a risk assessment because the changes/issues covered by this report are not significant in terms of risk or have previously been considered.

7 Resource Implications

7.1 None

8 Legal Implications

8.1 Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution under review. The lack of an up to date and effective Constitution could increase the risk of governance failures.

9 Equality Issues

9.1 An Equality Impact Assessment of the matters in this report is not required as no potential for unlawful discrimination and/or low level or minor negative impact have been identified.

10 Other Issues

10.1 Community Safety - none

10.2 Environmental Health Issues - none

10.3 Sustainability and Addressing a Changing Climate - none

10.4 Property Issues - none

10.5 Wards/Communities Affected - none

11 Conclusion and reasons for recommendation

11.1 The proposed changes to the Constitution will ensure that the Council is able to continue to operate in an effective and efficient manner.

11.2 In addition, the report sets out a proposed change to the scheme of delegation to officers for the reasons set out in the report.

<u>Background Papers (Local Government Act 1972 Section 100D)</u> None			
<u>Confidentiality</u> It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	1	File Ref:	N/A
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