
Proposed Changes to the Council's Constitution

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| Relevant Portfolio Holder | Cllr David Thain |
| Portfolio Holder Consulted | Yes |
| Relevant Head of Service | Claire Felton, Head of Legal, Democratic and Property Services |
| Wards Affected | N/A |
| Ward Councillor Consulted | N/A |
| Non-Key Decision | |

1. SUMMARY OF PROPOSALS

- 1.1 This report details the background to recommendations that were made at a recent meeting of the Constitutional Review Working Party in respect of delegations to Officers for Section 106 funds and to Planning and Regeneration Services. In addition, Members are asked to consider extending the temporary delegation to Officers to determine all matters relating to hackney carriage and private hire operators until the end of the municipal year.
- 1.2 In the first place the report requests that authority be delegated to the S151 officer so that they can spend and allocate S106 monies in accordance with the originally agreed S106 agreement without returning to Council once the monies have been received. Councillors will be able to monitor this spend on the quarterly finance reports.
- 1.3 In the second place it is proposed to amend the Scheme of Delegation in relation to Applications received by Planning Services. This will improve efficiencies within the service, whilst maintaining Planning Committee's focus as the key decision maker on significant planning applications.
- 1.4 The amendments to Planning delegations cover four areas; increasing the number of objections required to trigger determination of the application at Planning Committee; removing the exception for applications for restaurants and Cafes to be reported to Planning Committee, ensuring the list of relevant legislation is 'future proofed' and enabling Officers to respond to consultations from other councils. Where relevant these changes are accompanied by the need to consult with the Chair of Planning Committee, or in their absence, the Vice Chair.

- 1.5 The amendments to the planning delegations will apply to Applications registered after midnight on 18th November 2020, or requests for advice or responses received after midnight on 18th November 2020.

2. RECOMMENDATIONS

Council is asked to RESOLVE that:-

- 1) authority to spend S106 monies up to a value of £50k be delegated to the S151 officer to spend in line with the S106 agreement which caused the receipt of the S106 monies;**
- 2) the proposed revisions to the Scheme of Delegations for Development Management be approved; and**
- 3) for a temporary period up to the end of the 2020/21 municipal year, the delegation to the Head of Regulatory Services (Worcestershire Regulatory Services) shall be to determine all matters in relation to Hackney Carriage and Private Hire Operators, Vehicles and Drivers.**

3. KEY ISSUES

Planning Delegations:

- 3.1 The Scheme of Delegation delegates some decisions to officers. It is essentially a permissive scheme allowing planning decisions, actions, advice and responses on behalf of the local planning authority, to be delegated to officers, except in a number of specific circumstances. These are listed as being numbers 1 to 11 in Appendix 1.
- 3.2 These circumstances provide a set of checks and balances for decision making, ensuring an open and transparent process. This approach also ensures that elected Members are the decision makers for those types of application which have the most significant impact on the Borough such as Major applications and where the Council is a party to a Legal Agreement under Section 106.

Two or more objections

- 3.3 Exception 9 requires applications that are recommended for approval, but are subject to two or more objections, to be referred to Planning Committee for decision. Such instances often involve Householder Applications or more minor developments (Appendix 2 details recent examples).

- 3.4 The Council's adopted Borough of Redditch Local Plan number 4 and High-Quality Design Supplementary Planning Document provide guidance for consideration of these application types. Both of these documents were approved by Full Council. Officers experience and judgement in considering both design and impact on residential amenity is used to arrive at a balanced planning judgement in these situations. This considers representations received from interested parties and other material considerations, for example what development may be possible at a site without the need for a Planning Application.
- 3.5 In reporting these applications to Committee, those who have objected are invited to address the Committee to express their views. Appendix 2 sets out in the instances in which this opportunity has been taken up and the decision made on the application.
- 3.6 Exception 9 necessitates that a number of often smaller scale applications are reported to Planning Committee throughout the year. When member and officer resources are considered, alongside the fact that the decision made on these applications often reflects the initial officer recommendation, officers consider that this arrangement does not necessarily amount to an effective running of the service. Neither do the delays experienced in the speed of decision making, provide for good customer service.
- 3.7 A proportionate approach is therefore recommended depending upon the type of application and the scale of representation received. **For Householder applications** (i.e. developments within the curtilage of a dwelling house which require an application for planning permission and which are not a change of use.) it is proposed that applications with up to and including 10 objections are delegated to the Head of Service and designated officers. Applications, with 11-20 objections are delegated to the Head of Service and designated officers in conjunction with the Chair of Planning Committee (or Vice Chair) and those applications with a larger number of objections (21 and above) remain as triggering the requirement for determination at Planning Committee. In the operation of this approach the Chair of Planning Committee would be the first point of contact, if they were unavailable the Vice Chair would be contacted.
- 3.8 **For all other application types** it is proposed that applications with up to and including 4 objections are delegated to the Head of Service and designated officers. Applications, with 5 -10 objections are delegated to the Head of Service and designated officers in conjunction with the Chair of Planning Committee (or Vice Chair) and those applications

with a larger number of objections (11 and above) remain as triggering the requirement for determination at Planning Committee. In the operation of this approach the Chair of Planning Committee would be the first point of contact, if they were unavailable the Vice Chair would be contacted.

3.9 Exemption 9 would then read.

- a) *The application is a **Householder application** and between 11 and 20 individual letters of objection from separate addresses and raising material planning considerations are received from separate members of the public and the Officer recommendation is for approval, in which case, the application will be determined by the Head of Planning, Regeneration and Leisure Services/Planning Officers in conjunction with the Chair of Planning Committee (or in their absence the Vice Chair)*

More than 21 individual letters of objection from separate addresses and raising material planning considerations are received from separate members of the public and the Officer recommendation is for approval.

- b) *The application is **not a Householder application** and between 5 and 10 individual letters of objection from separate addresses and raising material planning considerations are received from separate members of the public and the Officer recommendation is for approval, in which case, the application will be determined by the Head of Planning, Regeneration and Leisure Services/Planning Officers in conjunction with the Chair of Planning Committee (or in their absence the Vice Chair)*

More than 11 individual letters of objection from separate addresses and raising material planning considerations are received from separate members of the public and the Officer recommendation is for approval.

Applications relating to certain use classes

- 3.10 Exception 11 requires new restaurants, cafes, pubs, wine bars, hot food takeaways and various assembly and leisure uses to be reported to Planning Committee. Such uses fell within Classes A3, A4, A5 and D2 of the Use Classes Order 1987.

- 3.11 Members should note that since this was drafted that the adopted Local Plan includes a policy to limit the amount of hot food takeaways in district centres.
- 3.12 In addition, the Planning system has become increasingly flexible in terms of town centre uses in recent times. For example, it is possible to change the use of some buildings to a temporary (two years) flexible use upon a simple notification to the Local Planning Authority. This notification is not an application requiring consent and subject to some limitations, this change is permitted. This includes the ability for that use to be an A3 use (restaurant or café)
- 3.13 Furthermore, it is possible, through a light touch process (Prior notification), to permanently change the use of a building to a restaurant or cafe, subject to a limited list of impacts including the desirability of the change in relation to the loss of a retail or financial/professional unit, or if in a key shopping area, on the sustainability of that area. Members are aware of policies in the Local Plan that seek to protect the retail core in this regard (Policy 32). In addition, the Government has recently (1st September 2020) amended and simplified the Use Classes Order to better reflect the diversity of high street and town centre uses, whilst also providing flexibility for business to adapt and change. This introduces a new 'Commercial, business and service' use which incorporates A1, A2, A3 uses with office use (B1) as well as other town centre uses previously in D1 (Health centres) and gyms (D2).
- 3.14 *Against this permissive backdrop, it is proposed to omit the need for applications for A3 uses to be presented to Planning Committee.* Proposals for all other listed uses in exception 11 will remain as committee items.

List of Legislation

- 3.15 At present Part 5 Table 5.08 of the constitution lists under 'Development Management' 29 separate pieces of legislation. Whilst changes in legislation are not a regular occurrence, when this does occur this requires applications to be reported to committee solely on the grounds that the legislation is absent from the list. A recent example of this is the introduction of the Permission in Principle application type (is an alternative way of obtaining planning permission for housing-led development) via The Town and Country Planning (Permission in Principle) Order 2017 (as amended).
- 3.16 As all subordinate planning legislation (regulations, orders directions etc) essentially emanate from the principal Planning Acts by adding a

specific provision which allows new legislation to be included on this list automatically, this will futureproof the scope of the Scheme of Delegation. Applications that trigger any of the other exceptions (such as Major applications, or ones with an objection from a Statutory consultee) will still require referral to Planning Committee

- 3.17 *It is proposed therefore to add The Town and Country Planning (Permission in Principle) Order 2017 (as amended) to the list along with the statement; "Any reference to an Act of Parliament, Regulation or Order in this scheme of delegation shall be deemed to include reference to any statutory modification re-enactment or replacement thereof for the time being in force"*

Response to consultations from other Councils

- 3.18 When applications are received by neighbouring authorities which abut the Borough boundary, there is a duty on that other authority to consult with the Borough Council to give this Council the opportunity to express its views. These consultations often trigger the need for referral to Planning Committee due to the scale of the application. Such consultations are time limited and require a response with 21 days of notification. In conjunction with the Committee timetable it is difficult to provide a response within this time frame.
- 3.19 To provide more timely responses, whilst also retaining appropriate input, it is proposed, that where a response is justified, that this is provided by Officers in conjunction with the Chair of Planning Committee (or the Vice Chair)
- 3.20 This will be addressed by the addition of a new exemption number 12 that says.

The action involves responding to a consultation request from an adjoining Local Planning Authority, in which case, and if a response is justified, this will be prepared by the Head of Planning, Regeneration and Leisure Services/Planning Officers in conjunction with the Chair of Planning Committee (or in their absence the Vice Chair)

Financial Implications

- 3.21 S106 monies are received from developers as a contribution towards the increased pressure on the local area and to mitigate this. The Agreement specifies at the point of signing the area and what the monies can be spent on. At present permission is sought from council to spend these monies once they are received. Going forwards the

proposal is that it is reported in arrears on the quarterly financial monitoring reports to members and that officers have delegated authority to spend the monies in line with the agreement up to a value of £50k.

- 3.22 Currently the S106 monies are monitored by several officers. There is a lot of s106 agreements to monitor and can be quite a timely process. The current process when officers wish to utilise the monies is that they must request approval through the normal democratic process. This due to the time of meetings can act as a barrier to spend such monies and a delay in getting contracts in place and in time for certain projects. The developer also has a clawback date if the monies have not been spent and therefore being able to have delegated authority will enable us to act quickly and not have to return the money back to developers.
- 3.23 This should accelerate the spending of S106 monies helping with capital monitoring as well as ensuring schemes are delivered in the community as quickly and efficiently as possible.
- 3.24 The proposals for planning delegations will not involve additional costs to the running of the service. Efficiencies in terms of officer time are envisaged. Officer time will be needed to communicate these changes, but this will be provided from within the existing establishment.

Legal Implications

- 3.25 Section 101 of the Local Government Act 1972 (as amended) gives a general power to local authorities to discharge functions through officers. Local Authorities are required by the same Act to maintain a list of these, which is referred to as the Scheme of Delegation. This sets out those powers of the Council which can be carried out by officers of the Council.
- 3.26 Expenditure of S106 contributions is strictly governed by the S106 Agreement under which the sums have been received. The funds are used in accordance with the terms of the S106.

Service / Operational Implications

- 3.27 The Officer Scheme of Delegations is the part of the Constitution that gives authority for certain decisions to be delegated from Council, the Executive Committee (Executive) or other Committees to certain specified officers. It sets out the decisions which are delegated by Council to officers and the decisions which are delegated by the Executive to officers. In relation to certain regulatory decisions, the

delegation is from Council to the relevant committee, namely Planning Committee or Licensing Committee.

- 3.28 In respect of the S106 monies, managers meet with finance officers on a monthly basis to consider the current financial position and to ensure actions are in place to mitigate any variations to the budget.
- 3.29 The proposals in relation to planning delegations should assist in the effective provision of the Planning Service by providing for more timely decisions and responses to planning proposals whilst still considering the views of interested parties.
- 3.30 In an Urgent Decision Notice that was determined in March 2020 relevant Members agreed that for a period of three months, commencing 27th March 2020, the Head of Regulatory Services (Worcestershire Regulatory Services) would have delegated authority to determine all matters in relation to Hackney Carriage and Private Hire Operators, Vehicles and Drivers and to develop procedural processes to facilitate these determinations.
- 3.31 At the Annual meeting of Council, held on 22nd June 2020 Members agreed that this delegation should be extended for a further three months. The delegation was subsequently extended for a further three months in an urgent decision taken in September 2020 which extended the delegated authority up to 28th December 2020.
- 3.32 Officers are requesting that this delegation should continue to apply until the end of the 2020/21 municipal year. This will ensure that efficient Council business continues during the current lockdown and early into the New Year.
- 3.33 The Constitutional Review Working Party will consider any further proposed changes to the Scheme of Delegations and Committee Procedural Rules at meetings during the year.

Customer / Equalities and Diversity Implications

- 3.34 The proposed changes to planning delegations aim to provide a more effective service whilst retaining a balance of public involvement in the Planning system. Changes will be communicated to applicants and agents via the Councils website and a clear cut off point will be provided as to when these changes take effect. There are no adverse Equality impacts arising from the proposals.

4. RISK MANAGEMENT

- 4.1 The regular financial monitoring by Officers and Executive will provide a framework to mitigate the above risks in respect of Section 106 monies.
- 4.2 The proposals do not introduce any additional risks to the Planning function.
- 4.3 Should recommendation 3 above not be approved, then after 28th December 2020 Members and Officers would need to physically attend meetings at the Town Hall and to collectively inspect vehicles. This would place Members, Officers and potentially members of the public, specifically taxi drivers, at risk of breaking social distancing rules as well as of potentially spreading Covid-19.

5. APPENDICES and BACKGROUND PAPERS

Appendix 1 Current Scheme of Delegations – Planning and Regeneration

Appendix 2 Record of why applications were considered by Planning Committee in recent months

Appendix 3 Current scheme of Delegation (Planning and Regeneration) with proposed track changes

Appendix 4 Proposed Scheme of Delegation – Planning and Regeneration

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