

STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

Standards Committee

19 November 2021

TITLE:	Planning Applications Scheme of Delegations
PORTFOLIO HOLDER:	Councillor Mike Bowen – Portfolio Holder for Communities
CONTACT OFFICER:	Ben Haywood – Head of Development Services
WARDS INVOLVED:	Non-Specific

Appendix A – Proposed Revised Delegations

1. Reason for the Report

- 1.1 The remit of the Standards Committee includes the review of the Council's Constitution. Members are asked to consider proposals to revise the Council's planning applications scheme of delegation in order to improve the way in which applications are administered and to make comparable with national averages.

2. Recommendation

- 2.1 That the Committee recommends to Full Council the revised planning delegations.

3. Executive Summary

- 3.1 74% of the Council's planning application decisions are currently made under delegated powers. This is significantly below the national average of 95% and is the second lowest in the Country.
- 3.2 Large committee agendas have a number of negative consequences for the Council including, significant additional resource and cost implications of committee decision making; additional strain on officers, Members and the general public; increased risk of overturns and Appeals; adversely affecting planning application processing times and performance; delaying development and investment; creating uncertainty in the planning process and discouraging applicants and investors.

- 3.3 This report considers how the number of delegated decisions can be increased whilst achieving a balance between efficiency in democratic accountability.
- 3.4 Analysis has shown that a significant percentage of committee decisions are accounted for by “call-ins”. The Planning Applications Committee often subsequently follows the officer recommendation meaning that had it been dealt with under delegated powers, the Committee would have been happy with the outcome. This report puts forward a number of proposed changes to the current scheme of delegation aimed at reducing the number of call-in’s by more rigorous scrutiny of requests, whilst maintaining and building Member confidence in the process and judgement of officers.
- 3.5 It also proposes a number of other changes to the scheme of delegation to allow non-controversial decisions, such as refusals of contentious applications, or decisions which are clearly in accordance with adopted policy to be taken by officers.
- 3.6 It proposes to do this by:
- Ensuring that all call-ins are received during the statutory consultation period.
 - Replacing the existing adversarial “dispute resolution” panel with a more collaborative joint consideration of call in requests in conjunction with the Chair and Vice-Chair of the Committee.
 - Ensuring that decisions which are clearly in accordance with local and national planning policies do not need to be considered by Committee
 - Giving officers the ability to refuse applications which are controversial, in accordance with the wishes of the community, without the need to refer to Committee.
 - Clarifying the position around resubmitted / revised applications and Member / staff / Council applications.
 - Maintaining an element of discretion.
- 3.7 An amended wording for the delegation within the Constitution is proposed at Appendix A to the report. This report was considered by the Constitution Review Working Party on 21 October 2021. The Working Party approved the proposals contained in Appendix A for recommendation to Full Council subject to the following amendments:
- Part (i) – The panel considering the request for call-in to include the Cabinet Member with responsibility for planning.
 - Part (i) The Member calling-in the application to have the option of being present at the panel at the discretion of the Chair of the Planning Applications Committee.
 - Part (i) – Addition of “Legal advice to be sought where appropriate”;

4. How this report links to Corporate Priorities

- 4.1 Achievement of the Council’s priorities is dependent on a sound decision making process being in place.

5. Alternative Options

- 5.1 The Committee is asked to consider the proposals put forward in the report.

Neil Rodgers
Executive Director (Place)

Web Links and Background Papers

[Council Constitution](#)

Contact details

Ben Haywood
Head of Development Services
Ben.haywood@staffsmoorlands.gov.uk

6. Detail

- 6.1 In the year ending September 2020, according to figures published by the Department for Communities and Local Government, at SMDC 74% of decisions made on planning applications were under delegated powers, compared to a national average of 95%. This was the second lowest level of delegation in the country with only the Isles of Scilly at 54% below SMDC.
- 6.2 From the 1st April 2018 to 31st December 2020 313 applications were determined by Committee, giving an average number of applications per monthly agenda of 7.2. However, in practice, agendas can regularly have up to 10 or 11 items.
- 6.3 Low levels of delegation have a number of negative implications for the Council, including:
- **Cost & Resources** – Committee decisions are more expensive compared to delegated decisions. A delegated decision requires the case officer to produce a report, which must be reviewed by a senior officer and signed off. The decision notice can then be issued. A Committee decision requires a longer and more detailed report, which must then be cleared and reviewed by a senior officer. The agenda must then be produced and published by Democratic Services. A Chair's briefing meeting is then held attended also by the Vice Chair, Head of Development Services, Democratic Services Officer and other planning officers or legal officers as required. Letters are sent to all of those who registered an interest in the application inviting them to the meeting. Speakers must be registered by Democratic Services. The day before the meeting, officers must prepare a committee presentation and late representations / update report, which again must be published by Democratic Services. Where a virtual meeting is to be held and site visit video must be produced. On the day of committee, site visits take place in the morning (where a physical meeting is to be held) or a "virtual" site visit takes place, attended by the Head of Service, Members and other officers as required. The meeting itself then takes place involving all of the above mentioned officers again. Where an

agenda runs to 10 or 11 items, the amount of resource consumed can be very considerable.

- **Length of Agenda** – Site visits commence at 10am, and where there is a long agenda of, for example 10 items, can be expected to last until after 1pm. The meeting itself begins at 2pm and can continue, in some cases until after 6pm in the evening. This means that committee can be a long and tiring day for Members and officers, alike, as well as interested members of the public who may be watching the committee or waiting their turn to speak. In the majority of cases a public speaker will only be interested in one item on the agenda of course. Queries must be raised as to whether fatigue on behalf of those involved in the meeting could negatively impact quality of decision making.
- **Overtake and Appeals.** – Higher levels of committee decision making can lead to more overturns of recommendations and potentially more appeals. Applications which are refused by committee contrary to officer recommendation generally have a poorer chance of being successfully defended at Appeal.
- **Time Delays / Impact on performance** – The Council's planning application performance is measured at the corporate and national level by the number of applications dealt with in the statutory 8 or 13 week timescales or other timescale as agreed in writing with the applicant. Committees meet monthly and because of the amount of additional work involved in a committee decision, inevitably decisions take longer to issue from the point of recommendation. If an application is not ready to be determined at the point at which the agenda is published it must then wait a further month for determination. This adds time delays into the process and can adversely affect performance, particularly where call-in requests are received, close to the end of the 8 or 13 week period. Where this happens, the Council is fortunate in that officers have a good working relationship with agents and applicants, and most are happy to agree an extension of the determination period to cover the period until committee. Accordingly, performance is high but not all applicants are happy to do this which means performance targets which could otherwise be achieved are missed. Furthermore, government proposals in the recent White Paper propose removing the ability to agree extensions of time with applicants and financial penalties for not meeting performance targets.
- **Uncertainty** – The committee process creates uncertainty in the Council's decision making. An applicant can engage in positive pre-application discussions with officers, and achieve a recommendation of approval but has no certainty that permission will be granted. This can lead to a reluctance on behalf of developers to invest time and money in pursuing schemes in the Staffordshire Moorlands where there is little certainty of a successful planning outcome.

6.4 Clearly, the only way in which this issue can be addressed in order to reduce the number of applications going to committee and to fall in line with other

authorities and the national average is to examine carefully, the present scheme of delegation and terms of reference to Planning Committee.

6.5 The Government's Planning Practice Guidance states:

"The exercise of the power to delegate planning functions is generally a matter for individual local planning authorities, having regard to practical considerations including the need for efficient decision-taking and local transparency. It is in the public interest for the local planning authority to have effective delegation arrangements in place to ensure that decisions on planning applications that raise no significant planning issues are made quickly and that resources are appropriately concentrated on the applications of greatest significance to the local area.

Local planning authority delegation arrangements may include conditions or limitations as to the extent of the delegation, or the circumstances in which it may be exercised". (Paragraph: 015 Reference ID: 21b-015-20140306 Revision date: 06 03 2014)

6.6 The basic premise of a scheme of delegation must be to achieve a balance between efficiency in democratic accountability. The Council's current scheme of delegation states:

Any matter which is within the Terms of Reference of the Planning Applications Committee, as fully defined in Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and identified in Part III of the Council's Constitution shall be delegated to the Head of Development Services except where:-

- (i) a matter is requested in writing by a Member giving planning reasons for consideration and determination by the Committee;*
- (ii) a matter is contrary to agreed local plan policy, such that its approval or refusal would be defined as a departure.*
- (iii) in the view of a Member of the Council or the Head of Development Services, a matter is of significant public interest, and/or, is believed to be controversial the matter shall be considered and determined by the Committee;*
- (iv) notwithstanding the foregoing clauses (i) - (iii) the Head of Development Services may at his discretion refer any other matter to the Committee for consideration/ determination*
- (v) in the event that the Head of Development Services is unwilling to refer an application to the Committee because he considers the proposed planning reasons to be insufficient, and the Member requesting the referral disagrees, the matter shall be determined by a panel consisting of the Chair of the Planning Applications Committee, the Executive Director and the Head of Legal and Election Services.*

6.7 In addition, there are a number of "unwritten" rules which have historically been applied through custom and practice. For example, where a previous application on a site has been to Committee, any subsequent amendments or resubmissions also go to Committee.

- 6.8 An analysis has been undertaken of the reasons for referral to planning committee. Unlike most local planning authorities over recent years SMDC has historically experienced very low levels of major developments, and in particular major housing applications. In fact, the SMDC scheme of delegation allows officers to deal with major applications, provided that these are not required to be referred to Committee for another reason, e.g. controversial, called in or a departure from policy. Therefore, whilst some of the committee's workload is naturally major schemes, numerically, the majority of applications going to Committee are minor and other applications which are either contentious, are departures from local plan policy, are referred for another reason in the public interest or are called in by Members.
- 6.9 Clearly, little can be done to control the number of contentious applications, and it is right and proper in the interest of accountability and fairness that such applications should be determined by Committee where officers wish to make a decision contrary to the tide of public opinion. However, where officers wish to refuse applications in accordance with the wishes of the community there is the opportunity for greater delegation. The adoption of the Local Plan will reduce the number of applications regarded as departures, although there is a lack of clarity in the current scheme of delegation around whether applications should be refused where the officer recommendation in such cases is in line with adopted policy.
- 6.10 In the period between April 2018 and November 2019, 18% of applications considered by Committee were as a result of Member call-ins. Of the applications called in, in 35% of cases the Member calling in the application was in favour of the proposal and in 65% of cases they were against. 23% of the applications called in resulted in an overturn of the officer recommendation.
- 6.11 From this it can be concluded that, managing the number of call-in's would be an effective means to improve the levels of delegation. The majority of Members are happy for Officers to make decisions under delegated powers but there are a small number who feel that Committee scrutiny is required in a lot more cases than other Councillors do. In order to address this issue, therefore, there is a need for more scrutiny of call-in requests and a more objective approach to accepting them, whilst maintaining and improving member confidence in the process and officer judgement.
- 6.12 Importantly, in the great majority of cases the committee agrees with its officers recommendations on called-in applications. Therefore, had an officer been allowed to make those decisions under delegated powers, the Committee, would have been satisfied with the outcome.

7 Proposal

- 7.1 In order to reduce the number of applications unnecessarily going to committee, the following changes are proposed to the scheme of delegation:

- The basic premise of the call-in process is considered to be sound. Members must give planning reasons in writing. However, call-in's late in the process can be problematic for performance and applicant confidence. It is therefore proposed to limit the call-in period to the statutory consultation period.
- The current scheme includes a provision, in the event that the Head of Development Services is unwilling to refer an application to the Committee because he considers the proposed planning reasons to be insufficient, and the Member requesting the referral disagrees, that the decision whether to call in shall be made by a panel. This consists of the Chair of the Planning Applications Committee, the Executive Director and the Head of Legal and Election Services. This is essentially a "dispute resolution" process and appears somewhat "adversarial" in nature. It is proposed that this should be replaced with a more "collaborative" approach where call-in requests are all considered and agreed by the Head of Service in discussion with the Chair and Vice-Chair thereby building mutual trust in the process.
- At present any "departure" from the Development Plan must be referred to committee. It is considered that the scheme of delegation should be amended to make clear that this is only where the officer recommendation would result in a departure. Determination in accordance with the plan should be under delegated powers.
- Similarly, where a Member wishes to call an application into committee because they are seeking approval or refusal of the application and that decision would be clearly contrary to adopted local or national policy e.g. development in the Green Belt, the decision should be made under delegated powers.
- It is considered that applications which are "controversial" should continue to be referred to committee but only where officers are minded to approve the application. Where officers are minded to refuse in accordance with the wishes of the community this should be done under delegated powers. There is no need to refer to the view of Members in this provision as it is covered under the general call-in provisions under the first bullet point above.
- It is considered that in the interests of probity a specific provision should be made for applications made by staff, Councillors, the Council itself or on land in which the Council has an interest.
- The position around resubmitted applications should be clarified and formalised. These should only be referred to Committee where the Chair, Vice Chair and Head of Service agree that this is necessary rather than being referred automatically.
- It is considered that the Head of Development Services should retain the ability to refer at his or her discretion any other matters in the public interest.

- 7.2 This report was considered by the Constitution Review Working Party on 21 October 2021. The Working Party approved the proposals contained in Appendix A for recommendation to Full Council subject to the following amendments:
- Part (i) – The panel considering the request for call-in to include the Cabinet Member with responsibility for planning.
 - Part (i) The Member calling-in the application to have the option of being present at the panel at the discretion of the Chair of the Planning Applications Committee.
 - Part (i) – Addition of “Legal advice to be sought where appropriate”;
 - Parts (ii) and (iii) – Minor tidying up of the wording.
- 7.3 In response to the latter point, it is considered that Part (iii) is in effect duplicating Part (ii) and should be omitted in the interests of simplification and clarity.
- 7.4 Since the meeting of the Working Party, up-to-date figures have been prepared relating to the number of call-ins. From 1st January to 31st October 2020 from the published agendas, of 62 applications dealt with at committee, 25 were call-ins, which equates to 40%.