

Agenda Item No:	13	
Committee:	Full Council	
Date:	30 September 2024	
Report Title:	Constitutional Amendments: Planning Scheme of delegation	

Cover sheet:

1 Purpose / Summary

- 1.1 The purpose of this report is to consider revisions to the Planning scheme of delegation within the Council's Constitution.

2 Key issues

- 2.1 The Council's Constitution includes within it a scheme of delegation. This identifies what duties / tasks can be carried out by officers instead of Planning Committee and sets out any conditions associated with these authorisations.

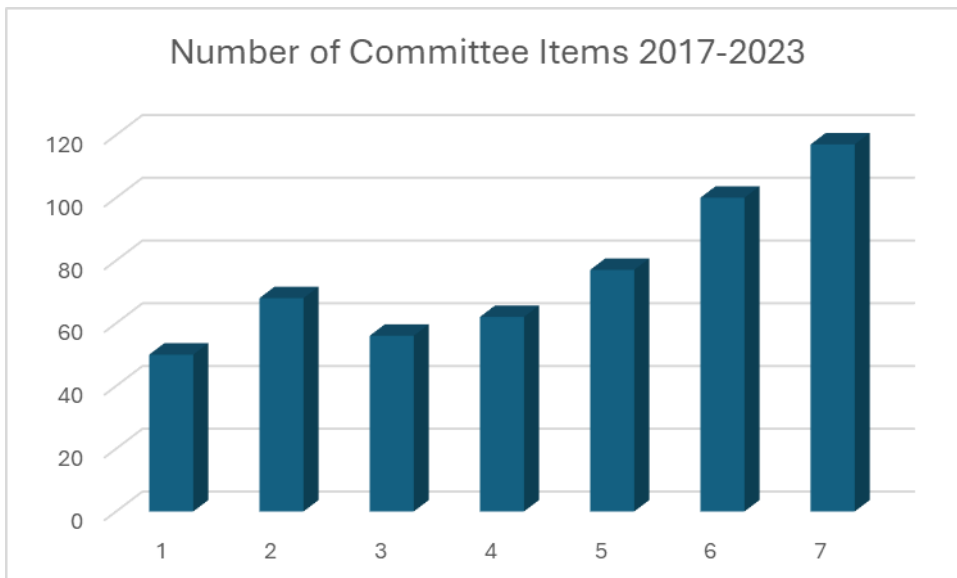
3 Recommendations

- 3.1 Revise the Planning scheme of delegation within the Council's Constitution as set out at Appendix A to:
- The 6 or more unresolved opinions will need to from different properties and received within the consultation period. This will be for paragraph 88 (i) and (ii) of the Constitution.
 - Removal of the requirement for the Head of Planning to consult the Chairman of the Planning Committee on 'Householder' planning applications when they are to be refused.
 - The time provided for the Chairman of the Planning Committee to respond to consultations from the Head of Planning to be extended to the end of the working day rather than 48 hours (i.e. feedback will need to be sent from the Chairman of the Planning Committee at the end of the working day after the passage of 48 hours since the list is sent to them).

Wards Affected	All	
Forward Plan Reference	N/A	
Portfolio Holder(s)	Councillor Dee Laws, Cabinet Member for Planning and Flooding	
Report Originator(s)	Matthew Leigh, Head of Planning	
Contact Officer(s)	Matthew Leigh - Head of Planning mleigh@fenland.gov.uk Carol Pilson - Corporate Director and Monitoring Officer	
Background Paper(s)	Constitution	

1 Background / introduction

- 1.1 The Council is a Local Planning Authority with responsibility for determining a range of planning applications. The majority of planning decisions are made using delegated powers. The more significant, contentious or controversial applications are referred to the relevant Committee/s for determination.
- 1.2 Every council has its own scheme of delegation to identify the circumstances where planning consent decisions are taken by Planning Committee rather than delegated to officers. The decision on whether matters are referred to the Planning Committee is influenced by a number of factors including the level of interest from local residents, whether the application is contentious and accords with the Council's own policies and probity issues where the council could be perceived as being biased if the application is delegated to officers.
- 1.3 Each planning application type has a statutory timeframe for which an application should be determined within (generally 8 or 13 weeks) and the Government places great importance on timely decision making. The PPG states:
" Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing."
- 1.4 Delegation of planning applications to Officers can save significant amounts of time and increase productivity within the Planning Service. However, it is important to balance the saving against the need for Elected Members to deal with the key and most complex planning applications.
- 1.5 As can be seen from the table below there has been a progressive increase in the number of items determined by the planning committee since 2017.



- 1.6 Government Guidance is that a minimum of 90% of planning applications should be determined at officer level under delegated powers and generally, across the country, around 95% of reports are dealt with under delegated powers.
- 1.7 Alongside the increase in applications being presented to the Planning Committee there has been a decrease in the percentage of applications determined at officer level.
- 1.8 When an application is referred to Committee it puts in place a process which is resource intensive. It is important that decisions are made at the appropriate level using the

Committee or delegated. Largely this is within the gift of the Council to decide, hence the Constitution of the Council including a Scheme of Delegation.

- 1.9 Both the Portfolio Holder for Planning and the Planning Committee Chairman have met with the Head of Planning and the potential to amend the scheme of delegation to ensure that the Planning Committee are provided enough time to prepare and deal with the more complex and contentious applications that are more appropriate for the Planning Committee to consider.

2 Considerations

2.1 Determination of Planning Applications & Planning Policy & Guidance

- 2.2 Planning law dictates that planning applications should be determined in accordance with planning policy (national as well as local) unless material considerations are sufficiently strong to outweigh policy in relation to the application being considered. This requirement is purposely in place so that there can be consistent decision making. This gives developers and the public confidence in the decision-making process.

- 2.3 There is no requirement for the Planning Committee to follow the recommendation of the Planning Officer as they are able to attribute reasonable weight, as they see fit, to the various material considerations. However, they are still bound by the same Policies, Government Guidance and Case Law as the planning officers.

- 2.4 Local Plans must be prepared by Councils and must be kept up to date (these two things being a legal requirement) and represent a considerable financial investment by the Council. The Local Plan sets out the growth ambition of the Council and the associated policies to be used in order to decide planning applications in a way that will deliver growth in the desired way. It follows, that in accordance with adopted policies (national or local) some forms of development will not be acceptable.

2.5 Fenland District Council

- 2.6 As Members will be aware Fenland District Council has previously been at risk of being placed in 'Special Measures' due to poor performance in relation to the time taken to determine the smaller scale planning applications. Whilst performance regarding this has significantly improved this is heavily reliant on the agreement of Applicants to enter in to an 'Extension of Time' (EOT) to extend the period for determination of the planning application.
- 2.7 Due to the relatively limited period provided by the legislation for Councils to determine smaller scale planning applications (8 weeks) it is very difficult for Planning Authorities to determine these applications within the statutory period if they are presented to the Planning Committee. This is due to the limited opportunity to present the items due to Committees being monthly, the lead in time for a Planning Committee (including a legal requirement to publish the Committee agenda a week prior to the Committee) the need to be able to draft a detailed and accurate report that has a robust recommendation without all of the consultation responses (there is a legal requirement to consult for a minimum of 21 days) and the capacity of senior officers to review the report alongside competing deadlines and priorities.
- 2.8 Furthermore, the Government have indicated that there will be a more detailed investigation into a Local Planning Authority's performance including time taken to determine planning applications within the Statutory Deadline irrespective of if an EOT has been agreed or not.

2.9 Proposed Amendments

- 2.10 It is suggested that the existing Scheme of Delegation is amended slightly in an attempt to facilitate a more timely decision making process. The proposed changes are attached as 'track changes' to the existing scheme as Appendix One.

2.11 A summary of the key changes is:

- The 6 or more unresolved opinions will need to come from different properties and received within the consultation period. This will be for paragraph 88 (i) and (ii) of the Constitution.
- Removal of the requirement for the Head of Planning to consult the Chairman of the Planning Committee on 'Householder' planning applications when they are to be refused.
- The time provided for the Chairman of the Planning Committee to respond to consultations from the Head of Planning to be extended to the end of the working day rather than 48 hours (i.e. feedback will need to be sent from the Chairman of the Planning Committee at the end of the working day after the passage of 48 hours since the list is sent to them).

2.12 6 or more unresolved objections

2.13 At this time an application that receives 6 or more unresolved opinions from any address (within the ward or adjoining ward) and at any stage of the lifetime of the planning application is required to go before the Planning Committee. This means that if six people write in the day before the 8 week deadline the application cannot be determined and it is required to go to the next available Planning Committee.

2.14 The proposed changes would require for the 6 or more unresolved opinions to come from different addresses. This is because whilst multiple people at a neighbouring site, for example, may have a very strong opinion this would be one sole planning matter and should be considered as so. The 'number' of pieces of correspondence should not be a material consideration in the determination of a planning application, this has been found to be the case by the Courts. 6 different addresses raising an opinion with a scheme may evidence that the development has more of a strategic importance than would first appear and reasonably indicates that a scheme should be considered by the Planning Committee. However, this is not the case when the opinions all come from the same property or premises.

2.15 Furthermore, it is considered reasonable to require the opinions to come in within the consultation period rather than at any time through the life of the application. This will enable a more timely decision making process and provide clarity for Officers on whether a planning application will need to go before the planning committee to assist in managing workloads and associated pressures.

Consultation with the Chairman of the Planning Committee

2.16 This part of the Scheme of Delegation is relatively new addition and it is therefore, appropriate to review how successful this has been.

2.17 It was acknowledged within the Committee report that the process would create an additional administrative process that would create more work for the Planning Officer and would reduce the timeframe for the LPA to consider the planning application. This places additional stress on the officers of the Council whilst making it more likely that an application will not be determined within the 8 week deadline. This pressure is to be decreased by the suggested amendment below.

2.18 From the 1 August 2022 to the 1st of August 2024 Fenland District Council determined 422 householder planning applications. A review of the last 2 years planning committees would indicate that only one planning application has been presented to the Planning Committee due to the Head of Planning's consultation with the Chairman of the Planning Committee on a refusal. It is therefore, considered that the additional workload for the Service is not proportionate to the quantum of applications that are presented to the Planning Committee. It is therefore, recommended that Householder planning applications should be removed from this part of the scheme of delegation.

2.19 The time provided for the Chairman of the Planning Committee

- 2.20 At this time the Chairman of the Planning Committee has 48 hours to respond when a planning application is to be refused. This can be a very restrictive deadline when the individual has competing priorities, particularly if there have been a high number of recommendations for refusal in a small period.
- 2.21 It is therefore, considered appropriate to extend the period to 17:00 of the second working day (i.e. feedback will need to be sent from the Chairman of the Planning Committee at the end of the working day after the passage of 48 hours since the list is sent to them).

3 Effect on corporate objectives

- 3.1 The grant of planning permissions through the Planning Committee and delegated decisionmaking process supports the following stated objectives:
- a) Attract new businesses, jobs and opportunities whilst supporting our existing businesses in Fenland
 - b) Promote and enable housing growth, economic growth and regeneration across Fenland

4 Community impact

- 4.1 Planning applications must be decided in accordance with planning policy unless material planning considerations outweigh the policy position. This ensures that fair and consistent decision-making takes place which is the backbone of the planning system and gives the public faith in its operation.
- 4.2 A more timely decision making process will improve the experience of the community when engaging with the Planning process.

5 Conclusions

- 5.1 It is correct for a Council to review the adopted Scheme of Delegation to ensure that it remains up to date and that the correct applications are going before the Planning Committee whilst balancing the need for timely decisions.
- 5.2 The proposed amendments would have the following benefits:
- It will speed up decision making process across a range of planning applications;
 - Members on Planning Committee can focus on developments that potentially have a more significant impact upon the District;
 - Will reduce the pressure placed on the Chairman of the Planning Committee to review recommendations for refusal by reducing the number but also providing an extended period.
 - Reduce the work pressure for the Planning Officers and Senior management within the Service;
 - Provide a financial benefit for both the Council and for Developers.
 - It would be clearer for the public where decisions are made regarding the type of application and also allow the public to know whether an application is to be determined at Officer or Committee level earlier in the process.
- 5.3 It is considered the suggested changes would result in a demonstrable improvement to the performance of the LPA, ensure that the Planning Committee deals with the most appropriate planning applications and also reduces the pressure on the Council's staff.

APPENDIX 1

Development Control

87. Having ensured that all statutory requirements and Council policies have been complied with and after considering all representations received;²⁷ 23(i)

(i) Determine all 'other', 'minor' and 'planning permission in principal (and associated technical consents)²⁸ applications submitted under any of the Acts or Statutory Instruments set out in Appendix A to this Scheme unless:-

- Called-in by Member (the development must be within their ward area or adjacent ward area and the Member request has been granted by the Head of Planning in consultation with the Chairman of Planning or substitute²⁹).
- 6 or more unresolved written opinions from 6 properties individuals, groups or organisations³⁰ are received, within the consultation period, from within the ward area or adjacent ward area which differ from the officer recommendation.
- Town/Parish views are in conflict with officer recommendation and the application is for more than 2 dwellings.
- The Head of Planning considers that the application merits committee consideration on the grounds of wider planning interests.³¹

For

- 'other' and 'minor' applications which have either FDC or Member involvement OR
- With the exception of 'householder' applications, 'other' and 'minor' applications where the officer recommendation is for refusal

the following procedure will apply;

²⁷ Amendment approved 18th September 2014

²⁸ Amendment approved 14th December 2020

²⁹ Amendment approved 5th August 2020

³⁰ Amendment approved 14th December 2020

³¹ Amendment approved 5th August 2020

The Head of Planning will consult the Chairman of Planning Committee and decide if:

The application should be determined by the Planning Committee OR the application should be determined under delegated powers by the Head of Planning.

If in the opinion of the Head of Planning in consultation with the Chairman of Planning Committee the recommendation is accepted, the case officer's decision will be countersigned by the Head of Planning.

If in the opinion of the Head of Planning in consultation with the Chairman of Planning Committee there are wider planning issues to consider the matter will be placed on the Planning Committee agenda.³²

- (ii) Determine all 'major' applications submitted under any of the Acts or Statutory Instruments set out in Appendix A to this Scheme unless:-
- FDC or Member involvement
 - Called-in by a Member (the development must be within their ward area or adjacent ward area and the Member request has been granted by the Head of Planning in consultation with the Chairman of Planning)³³
 - 6 or more written views from 6 individuals, groups, or organisations³⁴ are received (from the ward or adjacent ward)³⁵ which conflict with the officer recommendation
 - Town/Parish views are in conflict with officer recommendation
 - Statutory Consultee views are in conflict with officer recommendation
 - The Head of Planning considers that the application merits committee consideration on the grounds of wider planning interests.³⁶
 - The application is recommended for refusal in which case the following procedure will apply;

The Head of Planning will consult the Chairman of Planning Committee and decide if:

The application should be determined by the Planning Committee OR the application should be determined under delegated powers by the Head of Planning.

If in the opinion of the Head of Planning in consultation with the Chairman of Planning Committee the recommendation is

³² Amendment approved 5th August 2020

³³ Amendment approved 5th August 2020

³⁴ Amendment approved 14th December 2020

³⁵ Amendment approved 14th December 2020

³⁶ Amendment approved 5th August 2020

accepted, the case officer's decision will be countersigned by the Head of Planning.

If in the opinion of the Head of Planning in consultation with the Chairman of Planning Committee there are wider planning issues to consider the matter will be placed on the Planning Committee agenda.³⁷

- (iii) determine all applications pursuant to conditions attached to permissions,
- (iv) determine all requests for minor amendments to permissions,
- (v) determine all applications for certificates of lawfulness,
- (vi) respond to all consultations from Cambridgeshire County Council regarding applications submitted to them as the relevant Planning Authority,
- (vii) determine all applications for works to trees and those submitted under the Hedgerow Regulations 1997,
- (viii) determine all prior notification applications and all subsequent detailed submissions applications, but in the case of telecommunication applications where the officer is minded to recommend refusal the Head of Planning will consult the Chairman of Planning Committee and decide if:
The application should be determined by the Planning Committee OR
the application should be determined under delegated powers by the Head of Planning.³⁸
- (ix) determine all requests for screening or scoping opinions under the relevant legislation,
- (x) determine all applications for Ancient Monument Consent,
- (xi) determine all applications for Hazardous Substances Consent,
- (xii) determine all queries relating to 'permitted development' i.e. is permission/approval/consent/notification required,
- (xiii) make and confirm Tree Preservation Orders unless any relevant objections are received.
- (xiv) Respond to applications for Goods Operators' Licences as appropriate,

³⁷ Amendment approved 6th August 2020

³⁸ Amendment approved 6th August 2020

- (xv) Respond to consultation regarding the erection or modification of overhead power lines and ancillary equipment,
- (xvi) Determine applications for Certificates of Appropriate Alternative Development,
- (xvii) To enter into legal agreements under Section 106 of the Town & Country Planning Act 1990.
- (xviii) To decline to determine applications under Section 70 A, B & C of the Town & Country Planning Act 1990.³⁹

Definitions for section:-

Major applications (Department for Communities and Local Government codes 1-5),

- 10 or more dwellings or site area of more than 0.5ha,
- All other land uses - involving floor space of more than 1,000 sq m or a site area of more than 1ha,

Minor applications (Department for Communities and Local Government codes 6-10),

- 1-9 dwellings
- All other land uses involving floor space of less than 1,000sqm or sites of less than 1ha,

Other applications (Department for Communities and Local Government codes 11-17)

- Changes of use (except where fall into major category)
- Householder developments (within the curtilage of a residential property except for changes of use and creation of additional dwellings),
- Advertisements,
Listed Building consent to alter/extend
- Listed Building consent to demolish
- Conservation Area consents

FDC/Member involvement:-

- Landowner,
- Applicant
- Agent
- Staff member working in Development Service or in a closely associated Service

³⁹ Amendment approved 6th August 2020

OVERALL PROVISOS TO SECTION 88

any Fenland District Council member can require any delegated application in Category (ii) above to be referred to the Planning Committee for consideration by notification in writing to the Head of Development at planning@fenland.gov.uk⁴⁰ within three weeks of registration date (such notification must provide planning reasons for requesting reference to Committee and these planning reasons must subsequently be incorporated in the report to Committee). The scrutiny of the weekly list of applications circulated to members will facilitate this safeguard.

Head of Planning consultation with the Chairman on officer delegated refusals and call in process:

- ~~There is a 48-hour period (equivalent to 2 working days)~~ allowed for a consultation response to be received is by 17:00 hours 2 working days after the Chairman being originally consulted.
- A nil or late response will automatically mean that a delegated decision will be made on the application.
- Where there is a conflict of interest for the Chairman or substitute, a delegated decision on the application will be made.
- The consultation reply must be in writing and give a planning justification for any request for Planning Committee consideration.
- The Chairman must advise the Head of Planning and Development Manager of times when the substitute is acting.⁴¹

88. Planning Enforcement:

To:

- (i) issue Planning Contravention Notices;
- (ii) issue Requisitions for Information;
- (iii) authorise and issue Breach of Condition Notice proceedings;
- (iv) authorise and issue Waste Land Notices;
- (v) authorise and initiate Proceedings against Fly Posters;
- (vi) authorise and initiate Proceedings against Unauthorised Signs.
- (vii) issue Temporary Stop Notices
- (ix) issue Enforcement Notices

⁴⁰ Amendment approved 5th August 2020

⁴¹ Amendment approved 5th August 2020

(x) in cases of urgency in consultation with the Chairman of the Planning Committee (unless such consultation would have a detrimental effect on this power) to:

- a. issue a Stop Notice
- b. authorise an application for an injunction
- c. authorise the commencement of any legal proceedings such actions to be notified to the next scheduled meeting of the Planning Committee
- d. authorise prosecution following non-compliance with an enforcement notice of any type⁴²

(xi) issue notices requiring the Proper Maintenance of Land⁴³

89a. Brownfield Register

To prepare and publish sites in Part 1 of a Brownfield Land Register, as defined by The Town and Country Planning (Brownfield Land Register) Regulations 2017.⁴⁴

89b. To operate the Council's neighbourhood planning function (except for the 'making' (adoption) of such Orders and Plans) including, but not necessarily limited by, the following:

- The designation of neighbourhood areas and neighbourhood forums
- Providing comments on behalf of the Council to consultations on draft plans or orders
- Making decisions on behalf of the Council on whether a plan meets the basic conditions and should proceed to referendum, following the receipt of a report from the independent examiner and publishing this decision.⁴⁵

Food Safety Services, Health Services and Environmental Services

89. Generally to take action, to operate all legislative and administrative procedures including, but not limited to authorising any action, signing any documents, the service, issue or publication of any notice, order or other document in accordance with any of the Acts or Statutory Instrument set out in Appendix A to this Scheme, (including the power to appoint or revoke the appointment of authorised officers) if and in so far as each is relevant to the Council's environment functions.

90. Generally to take action and operate all legislative and administrative procedures in relating to the licensing and regulation of premises and activities. To issue licences and certificates or effect registration under powers conferred by any of the Acts or Statutory Instruments listed in

⁴² Amendment approved 6th August 2020

⁴³ Amendment approved 29th July 2010

⁴⁴ Amendment approved 14th December 2017

⁴⁵ Amendment approved 14th December 2017