

## **Delegated Decision**

**22 May 2020**

### **Amendments to the Officer Scheme of Delegation – Covid-19**



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## **Report of Corporate Management Team**

**Geoff Paul, Interim Corporate Director of Regeneration, Economy and Growth**

**John Hewitt, Corporate Director of Resources**

### **Electoral division(s) affected:**

All

### **Purpose of the Report**

- 1 The purpose of this report is to seek consent to urgent changes to the Officer Scheme of Delegation to allow for a greater number of planning and similar applications to be determined by officers given the ongoing uncertainty caused by Covid-19.

### **Executive summary**

- 2 The majority of applications for planning or other similar permissions are determined under the Council's constitution by planning officers. Applications for major or particularly contentious schemes are reserved for determination by the relevant Area Planning Committee or the County Planning Committee.
- 3 Due to advice from central government regarding social distancing during the ongoing Covid-19 crisis there have been no meetings of the County Council or any of its committees since the 18 March. This has led to a backlog of applications which require determination.
- 4 On the 4 April legislation was made allowing Local Authorities to hold meetings virtually. Whilst officers from Democratic Services and ICT continue to work on a solution to allow virtual meetings to take place, there is currently no set timeframe for that to happen.
- 5 The Chief Planner in his March Planning Update Newsletter encouraged Authorities to "consider delegating committee decisions where appropriate."

- 6 It is therefore proposed, in order to assist the council to meet statutory timeframes in respect of determining applications and to provide some certainty to business, that all matters are delegated to the Interim Corporate Director of Regeneration, Economy & Growth other than those which the Head of Development and Housing considers are likely to have a significant impact on the environment or are by their nature particularly controversial or those which have been properly called in by Member or Local Council.
- 7 Any matters which are not delegated will continue to be undetermined until such time as remote meetings begin or face to face meetings become possible once again. Preparations for commencing remote meetings are at an advanced stage and it is anticipated that it will be possible to convene Planning Committees in June 2020.

### **Recommendation(s)**

- 8 The Corporate Director of Resources is recommended to:
  - (a) Approve further delegations as outlined in paragraphs 21 – 24 of the report to enable the Interim Corporate Director of Regeneration, Economy & Growth to determine planning applications ordinarily reserved for committees;
  - (b) Report these changes to the next convenient meeting of the County Council; and
  - (c) Note the position in relation to the commencement of Remote Planning Committee Meetings.

## Background

- 9 The planning system unlocks the investment and development that underpins regeneration and economic growth, and this enables businesses to grow, new housing, jobs, productivity and social cohesion. It is one of the first considerations for any new investment and therefore essential in the development process and in particular as part of the recovery coming out of the current pandemic.
- 10 The rapid spread of the coronavirus is causing major disruptions to businesses and communities across the county. COVID-19 is compromising investment and development decisions, development confidence of supply chains, progress of development on site as well as undermining the general confidence to invest. A positive move to ensuring the planning process is fully operational is a much-needed boost to developers and investors in making key decisions going forward. A positive decision also signals intent and boost confidence that things are moving forward and is also an early indication to the supply chain that the development industry is activated.
- 9 Alongside the economic negativity from the outbreak we are experiencing some real positives including the entrepreneurship of our manufactures, the positivity of many of our developers in continuing to progress and the confidence our businesses to continue to invest; we need to ensure that planning provides the positive process that enables this to continue and supports the businesses which will help in restructuring county Durham moving forward
- 10 The majority of applications for planning or other similar permissions are determined under the Council's constitution by planning officers. Applications for major or particularly contentious schemes are reserved for determination by the relevant Area Planning Committee or the County Planning Committee.
- 11 In 2019, the council determined 3375 applications. 3270 of those were determined by officers (96.8%) with the remaining 105 applications being determined by Members.
- 12 Under the current Scheme of Delegations, Members determine the following types of application:
  - (a) those applications ... which have a relevant timescale of more than 35 days that any Member of the Council requests be determined by the Planning Committee...;
  - (b) those applications ... which have a relevant timescale of more than 35 days where a Member of the Council or an officer of the Planning Development Service or their spouse/partner or children

has an interest in the property or land ... and where there is an objection to the application or notification;

- (c) those applications ... which have a relevant timescale of more than 35 days where, despite a Town or Parish Council having expressed objection or support, the officer is minded to recommend the application or notification on material planning grounds contrary to the wishes of the local council...;
- (d) Major developments (excluding s73 Reserved Matter applications and Review of Mineral Planning Permissions) comprising:
  - (i) major residential developments (10 or more dwellings or a site area of 0.5ha or greater) except where the application is for a substitution of house types on a scheme already benefitting from an extant planning permission;
  - (ii) development of more than 20,000m<sup>2</sup> of floor space or a site area of 4ha or greater comprised in Use Class B1 (Business) and/or Use Class B2 (General Industrial) and/or Use Class B8 (Storage or Distribution) or waste and waste related development; or
  - (iii) development not falling within (i) and (ii) above, where the floor space is 1000 m<sup>2</sup> (gross) or more or the site area is 1 hectare or more except applications where the use or building would be for agriculture or personal equestrian use;
- (e) those applications ... which have a relevant timescale of more than 35 days likely to have, in the opinion of the Head of Development and Housing, a significant impact on the environment or are by their nature particularly controversial;
- (f) those applications ... which have a relevant timescale of more than 35 days recommended for refusal which involve the creation of 10 or more full time or equivalent jobs; and
- (g) those applications ... which have a relevant timescale of more than 35 days where there is a significant departure from Development Plan policy and which would be required to be the subject of a notification to the Secretary of State.

13 Due to advice from central government regarding social distancing during the ongoing Covid-19 crisis there have been no meetings of the Council or the Executive since the 18 March. This has led to a backlog of around 45 applications which require determination.

- 14 Officers have received a number of enquiries from the development industry seeking clarification as to what arrangements the council may be looking to put in place to overcome the postponement of Committees, with many reporting that clients are most keen to see decision making expedited in the interests of speedy economic recovery once the Country returns to normal trading conditions.
- 15 On the 4 April legislation was made allowing Local Authorities to hold meetings virtually. Whilst officers from Democratic Services and ICT continue to work on a solution to allow virtual meetings to take place, there is currently no set timeframe for that to happen.
- 16 The Chief Planner in his March Planning Update Newsletter encouraged Authorities to “consider delegating committee decisions where appropriate.”
- 17 Enquiries have been made of other authorities in the North East as to the arrangements they are putting in place for determining planning matters. Where a response has been received it is included at Appendix 2.
- 18 Most applications must be determined in either 8 or 13 weeks and these timescales are set out in statute. If an application is not determined within that time (and an extension is not agreed) the applicant may appeal to The Planning Inspectorate. An Inspector may award costs against any party who they deem to have acted “unreasonably”. Furthermore, if an application is not determined within 26 weeks the applicant is entitled to a refund of their fee.
- 19 It is considered that there is a clear justification to putting arrangements in place to expedite planning decisions as part of assisting in the recovery stage of the Covid 19 outbreak. In the majority of cases clearing of the planning hurdle is a pre-requisite to finalising land deals and commercial financing arrangements associated with major projects and these are therefore on hold until such a time as planning permission is obtained. Clearing the planning stage in a timely manner can assist greatly in shortening developers overall project timescales and provides significant additional comfort as one of a project’s key risks is removed.
- 20 In addition, it is understood that some of the applications are developer led with occupiers under contract to commit to a scheme but on time limited options. It is likely that a prolonged planning timeline could lead to the expiry of some developer options which may result in developments not coming forward. In all cases, clearing the planning timescale in a timely manner greatly assists in enabling development

projects to get to site in quicker timescales; this is clearly something of importance to the wider economic recovery of the County.

- 21 It is therefore proposed, in order to assist the council to meet statutory timeframes in respect of determining applications and to provide some certainty to business, that all matters are delegated to the Interim Corporate Director of Regeneration, Economy & Growth other than those which the Head of Development and Housing considers are likely to have a significant impact on the environment or are by their nature particularly controversial or those which have been properly called in by Member or Local Council.
- 22 Requests to call matters in to be determined by a committee must be made to the Head of Development and Housing within 21 days of publication and specify material planning grounds on which the request is made. Where a matter would have considered by a committee but for this report, and the 21 days from publication has elapsed, it shall be considered to have been called in if it has been objected to by a County Councillor.
- 23 An amendment to the Officers Scheme of Delegations, which forms part of the Constitution, is a matter which would ordinarily require the approval of the County Council. However, given the exceptional circumstances that the council is facing, coupled with the uncertainty as to when the County Council may meet again, it is considered appropriate for the Corporate Director of Resources to exercise the provisions contained at Table 1, Paragraph 12 of the Officers Scheme of Delegations. This allows Corporate Directors to take urgent decisions which would ordinarily be the responsibility of another council body. The Corporate Director of Resources must prepare a report to the next convenient meeting of the County Council, detailing the exercise of the use of the urgency provisions.
- 24 When determining matters which would ordinarily have been the purview of Members, the following process will be followed:
  - (a) The relevant Team Leader will contact the applicant to ascertain if they wish to seek to make use of the extended delegations;
  - (b) The relevant case officer shall prepare a report containing all such information as would ordinarily be presented to Members and is necessary to make an informed decision;
  - (c) The case officer shall circulate the report to the relevant ward Members and shall afford them five clear working days to make written representations (of no more than 500 words); and

- (d) The Interim Corporate Director of Regeneration, Economy & Growth will then consider the report and any written representations received and in doing so shall consult with the Chair of the relevant Committee (or, in their absence, the Vice Chair) and the Head of Legal and Democratic Services or their appointed representative.

25 Arrangements are being in put in place to hold remote meetings and it is proposed that these will begin at the end of May, with Planning Committees being convened in June 2020. The proposals to amend the Officer Scheme of Delegation will enable the planning process to proceed pending the commencement of remote meetings. It is anticipated that (at least in the initial period) fewer remote meetings will be held than if the Committee were to meet as normal. Therefore, the proposed amendment to the delegations will also assist in ensuring that business before the Committee remains manageable.

## **Alternative Options**

### *Take No Action*

- 26 Retaining the status quo would mean that the officers could continue to determine the majority of applications.
- 27 It would however mean that a significant minority of applications would remain undetermined for a as yet unknown period of time. This may lead to reputational damage and an increased number of planning appeals for non-determination. It may also have increased financial implications for the council in terms of fees which may need to be refunded and potential costs at appeal.

### *Delegate Everything*

- 28 An alternative to the current process would be to delegate these matters to the Head of Development and Housing provided that the relevant Member was consulted with as part of the decision-making process and the reasons for the Member's call in/objections are considered as part of the decision.
- 29 This would allow for almost all applications to be dealt within statutory timescales.
- 30 It would however mean that some of the most locally controversial issues could be determined without Member involvement.

## **Background papers**

- List any papers required by law / None

## **Other useful documents**

- Previous Cabinet reports / None

## **Author(s)**

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## **Appendix 1: Implications**

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### **Legal Implications**

The proposed amendment will go some way to enabling the council to provide a statutory service in the short to medium term. Amendments to the Constitution are a matter which require the approval of the County Council. However, in view of the ongoing Covid-19 outbreak it is considered appropriate to amend the scheme under the urgency provisions under Part 3, Table 1, Para 12 of the Constitution.

### **Finance**

The proposed amendment will reduce the risk of the Planning department having to refund fees and the council having costs awarded against it on appeal.

### **Consultation**

Constitutional amendments would ordinarily be considered by the Constitution Working Group. Whilst this is an officer decision, best practice would dictate that all group leaders are consulted on the proposed change.

### **Equality and Diversity / Public Sector Equality Duty**

N/A

### **Climate Change**

N/A

### **Human Rights**

N/A

### **Crime and Disorder**

N/A

### **Staffing**

N/A

### **Accommodation**

N/A

### **Risk**

Taking decisions under delegated powers as proposed in this report may increase the risk of adverse decisions on appeal given that there will be less public and member involvement than would ordinarily be the case. This will be mitigated by the preparation of fully reasoned reports and decisions. It could be further mitigated by allowing applicants and supporters/objectors a further opportunity to make written representations prior to the report being considered.

## **Procurement**

N/A

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## Appendix 2: Other North East Authorities

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North Tyneside	All matters delegated to Tier 2. Sub-delegation in place to Tier 3. Consultation with Chair/Vice Chair.
Middlesbrough	No change yet.
Redcar & Cleveland	No change yet.
Hartlepool	No change yet.
Gateshead	No change yet. Remote meeting held on 6 May.
South Tyneside	No change yet. Remote meeting being convened 26 May 2020
Northumberland	No change yet.
Newcastle	Remote meeting held 17 April but no matters determined. All matters delegated to Tier 3. Consultation with Chair/Vice Chair.