

BRECKLAND DISTRICT COUNCIL

Report of: Executive Director - Place

To: Planning Committee: 8 April 2019

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Subject: Revisions to the Scheme of Delegation

Purpose: To revise the delegation scheme in relation to the determination of planning applications.

Recommendation(s): That Members' support Option A and refer it to Full Council for adoption and to make the appropriate changes to the Scheme of Delegation.

Proposed Revisions to the Planning Scheme of Delegation

1 Introduction

- 1.1 In spring 2018 the Council went through a Peer Review of the Planning Committee undertaken by the Local Government Association (LGA) and Planning Advisory Service (PAS).
- 1.2 In relation to Delegation and Call-in (Section 3), the report highlights:
 - Committee reports fail to set out which Councillor has called-in the application and what the planning reason was for them to do so.
 - The report recommends that the Council should regularly review delegation and call-in procedures to find a balance between officer delegation and the opportunity for non-major but controversial applications to come to committee.
 - An exception policy is highlighted, under which all applications are delegated to officers except where they exceed set criteria.
- 1.3 The Action Plan arising from the Peer Review sets a requirement for a review of the existing Scheme of Delegation (SoD), and the suggestion of High, Medium and Low delegation models. This paper sets out three options for revisions to the extent of the delegated powers for planning together with an identification of the positive and negative aspects of each.

2. Background

- 2.1 The decisions made on planning applications can either be made by the Council's Planning Committee or by Council officers under powers delegated to them via the Council's SoD. The manner in which the decision is made (i.e. committee or delegated) has no impact on the decision itself. In either scenario the planning decision is recorded as a decision of the Council as the Local Planning Authority.
- 2.2 When a delegated decision is made; the officer produces a report which is then reviewed by a number of senior staff and an officer of the Council. After this review mechanism is complete, the decision is issued. For those applications being referred to the planning committee, the sequence of events is different:

- A briefing session is held between the Planning Management Team and planning case officers to discuss the detail of applications which might be referred to the planning committee
- An officer produces a report which is then reviewed by a number of senior staff
- Following the completion of this review, the report is published as part of the committee agenda pack
- The situation with applications often moves on and therefore a supplemental report is produced 2-3 days prior to the meeting to update the Committee members as to any changes.
- A Chairman's Briefing is held at which the Planning Management Team and the case officers run-through the applications on the committee with the Chairman and Vice Chairman of the Planning Committee.
- The Planning Committee meeting itself involves lots of staff to organise and support both the public and the Councillors.
- At the Committee meeting the Planning officers present their applications. They (and senior colleagues) are then often called upon to answer the questions of the Committee members or to address points raised by the public who have addressed the committee.

2.3 The significant increase in work undertaken for committee items means that applications dealt with in this way are more 'expensive' to deal with as there is a greater level of resource input. There is also the factor of time and delays. The cycle of Planning Committee meetings is fixed and therefore there can be delays for Applicant's awaiting the next available meeting. There can also be delays due to issues that arise at the committee, for example new issues raised in representations made to the Committee which the officers and/or Applicant aren't able to satisfactorily answer can lead to the item being deferred which causes further delay.

2.4 For these reasons, many Councils consider it to be a characteristic of an efficient and effective planning service to increase as far as possible the level of delegated decisions and reduce the number that are dealt with by the Committee. The Government collects and publishes data on the level of planning delegation for Local Planning Authority area.

LPA % Delegated Decisions (Year ending June 2018)¹:

- National 94%
- Breckland 88%
- Broadland 96%
- Great Yarmouth 92%
- Kings Lynn 94%
- North Norfolk 95%
- Norwich 92%
- South Holland 93%
- South Norfolk 95%

It can be seen that the level of delegation within Breckland is significantly below the national average as well as the average within Norfolk.

3. **Common Changes**

3.1 There are changes suggested as part of this review that are common to all three options.

Scope of 'Planning'

¹ Data Extract P134 (MHCLG)

- 3.2 In the existing SoD, the scope of 'Planning Applications' covered by the powers delegated to the Director are tightly defined and set out in list of application types. This approach lacks flexibility and means that as new applications emerge, the list can become out-of-date and there will be a lack of clarity as to how new applications are classified within the SoD.
- 3.3 The suggested solution is to alter the wording to 'planning matters' and to delete the list of application variants. This phrasing provides more flexibility and also clarifies that the SoD is designed to cover all planning related issues.

Call-In Form

- 3.4 A standardised Councillor Call-In form has been created [copy attached at Appendix 1]. The adoption of this new form will ensure that call-in requests are received in a consistent manner helping to reduce the confusion that can arise in the current system if emails are missed, or the wording used is misinterpreted. Councillors will be required to send the forms to a monitored email address to ensure any periods of absence don't impact on the request being actioned if certain staff are unavailable.
- 3.5 The current process relies on emails being sent in. There have been issues where the wording used by the Councillor has not made it easy for the officer to interpret the main planning issues involved or their preferences. The proposed new standardised form includes a requirement to indicate that the call-in is made on the basis of whether the Case Officer is minded to recommend either grant or refuse. This allows for applications to be dealt with under delegated powers if the recommendation accords with the Councillor's preference. A note has been added to the form to highlight to Councillors how to indicate that they want the matter heard at committee irrespective of the officer recommendation. It is anticipated that this option should be used infrequently for those applications that they consider to be highly contentious or sensitive.
- 3.6 Within the findings of the PAS review it is highlighted that committee reports fail to set out which Councillor has called-in the application and what the planning reason was for them to do so. The form includes a mandatory text box which Councillors will need to complete with the planning reason for their call-in. The form highlights (i) that this wording will be used in the public report, and (ii) that officers are available to help provide guidance on how to complete this section. Planning applications involve many issues, not all of which are of concern to local residents. Having a clear indication of the main issue(s) that have triggered the application to be called-in allows the officers to shorten their presentations to focus on these matters, which in turn helps with the smooth and efficient running of the committee.

Delegated powers to refuse

- 3.7 For both Options B and C a common change is to limit the extent of the criteria for automatic referral to be for applications that officers are minded to Approve. It is the approval of planning applications that has the biggest impact whereas the refusal of proposals which haven't been called-in by a Councillor is unlikely to be controversial.
- 3.8 Under planning legislation decisions on planning applications have to be made in accordance with the development plan. The refusal of a proposal would normally be because the application did not accord with the Council's Local Plan and, therefore, to refuse would be in-line with the expectations of the local community.

Chairman's Panel

- 3.9 The Chairman's Panel is (loosely) based on a similar scheme in operation at South Holland District Council that was referenced in the PAS report. The Panel would be able to come to a view on whether any proposals that would under any criteria in the SoD need to be referred to the committee, are sufficiently uncontroversial or non-sensitive to allow for them to be determined under delegated powers.
- 3.10 The Panel is not a decision making body and therefore it cannot direct any decision on the planning application. Its role is limited only to confirming which applications should be heard at the committee and identifying those for which this is not necessary.
- 3.11 In addition to identifying application that do not need to be referred to the committee, it is suggested that the panel could also fulfil a useful role in acting as a consultative body to help guide officers to identify applications which, would otherwise be deal with under delegated powers, that represent a wider interest and should therefore be dealt with at the Planning committee in the most transparent manner.
- 3.12 In terms of the membership of the Panel, this has been kept to a minimum. The rationale is that there needs to be a minimum of three Councillors on the panel to prevent any unilateral decisions. The membership of the panel is flexible and would be pre-agreed with the Committee Chairman for each session. Where the panel is convened with an even number of participants, the Chairman would retain the casting vote. Limiting membership to planning committee members is designed to ensure that participants have received planning training.
- 3.13 It is assumed that in many cases the Panel will be convened through the holding of a meeting at which officers will present the information to the Panel members and answer questions before obtaining their views. However, to maximise flexibility and to allow for quick advice to be sought when necessary, it is also recommended that the Panel be flexible enough to accommodate requests via the exchange of email. In these scenarios, an email would be sent from officers to a list of Cllrs, pre-agreed with the Chairman, to be the identified Panel for the issue. This email would include an explanation of the issues and a clear recommendation from officers. The expectation would be that Cllrs would offer their views by return of email. If no response was received from a Cllr within the prescribed time, it would be assumed that they had no objection to the officer recommendation.

Option A – High Delegation

- 3.14 The High Delegation Model [attached at Appendix 2] follows the exception principle whereby the default position is that planning matters are dealt with by officers unless they are called-in or they trigger a small list of criteria.
- 3.15 To limit as far as possible the criteria that trigger a requirement for a planning matter to be referred to the committee these have been limited to applications submitted by or on behalf of the Council, and applications made by Members or Officers of the Council. This ensures transparency and avoids any concerns being raised about the manner in which they have been handled.
- 3.16 An important trigger under this high delegation model is the ability for the Executive Director to refer matters to the committee. This allows for matters that might not be controversial to the Ward Councillor involved but that have wider impacts on the Council to be handled by the committee if this is deemed the best forum for them.

3.17 The current SoD wording already includes this power with the limitation that any such referral must be agreed in consultation with the Chairman of Planning Committee. Whilst his requirement has been retained, removing the need to agree matters with the Chairman and allowing the Executive Director to exercise their own 'call-in' would have operational benefits in terms of reducing delays and may also prevent any possible politicisation of controversial call-in decisions. In any future review of the impact the new SoD has achieved, it is recommended that this limitation on the call-in rights of the Executive Director be reconsidered in light of examples of how it has worked in practice.

Pro:

- Significantly reduce the number of medium/large scale but non-contentious applications that need to be referred to the planning committee.
- Promotes positive pre-application engagement by applicants with local residents and Cllrs at the pre-app stage. Applicants will know that if local people are broadly happy with the application, it is less likely to be called-in.
- Smaller, more manageable, committee agendas – this option would have the biggest impact in this regard.
- Will speed up determination times for minor and major applications. The default position will be that applications will be dealt with under delegated powers and therefore timelines aren't delayed waiting for the next available committee date. This might also help to reduce the use of Extensions of Time.

Con:

- For the 'delegated by default' model to work well there is marginally more pressure on local Councillors to call-in applications within their ward that they think should be discussed by the committee.

Option B – Medium Delegation

3.18 This second option, the Medium Delegation Model [attached at Appendix 3] follows the general exception principle used in Option A but increases the number of criteria that would require applications recommended for approval to be referred to committee automatically.

3.19 The purpose of Option B is to provide a 'halfway house' that removes some of the requirements upon Councillors (and officers) to proactively refer matters to the planning committee which are likely to trigger local sensitivities. On this basis, whilst it would help to reduce the number of applications at committee, it wouldn't have the same positive impacting in this regard as Option A.

3.20 A further improvement over and above the existing SoD proposed under Option B is to limit the scope of 'Major Applications' to remove (i) commercial developments; and (ii) secondary applications. At the moment, the committee make a decision on an outline application for a large housing site whereby they are agreeing the principles of development. Under the current SoD they still have to consider all future secondary applications such as reserved matters submissions, and minor amendments. There is often less value in these being considered by the committee (if they are not controversial), as the committee have already come to a view on the development of the site.

3.21 Option B also retains the category of 'Significant Applications'. This includes those applications that officers may wish to approve which are contrary to policy. In a scenario (like today) where the Council does not have a 5 Year Land Supply (5YLS), there are a number of speculative planning applications made for small scale developments such as single new dwellings outside the settlement boundary. At present all of these that are

supported by officers have to be presented to the planning committee and, under this Option B SoD, this situation would continue. This would still have the potential to result in a large number of applications going to Committee and it is proposed that these applications, applications for minor residential development that may be approved contrary to policy, could be the subject of a decision by the Chairman's Panel as to whether or not it is appropriate to take these matters to Committee.

Pro:

- Limits the scope of 'Major Applications' to remove commercial development and secondary applications where the Committee have already agreed the principle of development by agreeing an outline application.
- Smaller, more manageable, committee agendas – this option has less impact than Option A in this regard.
- Will speed up determination times for minor and major applications, particularly for commercial developments, as these will not be delayed waiting for the next available committee date. This might also help to reduce the use of Extensions of Time.

Con:

- Will not impact on common applications that the Council is dealing with due to its lack of 5YLS. Proposals that don't accord with policy (even if they aren't controversial) will still be referred to the planning committee unless the Chairman's Panel determines otherwise.

Option 3 – Low Delegation

- 3.22 Option 3 is the Low Delegation Model [attached at Appendix 4]. This largely maintains the status quo with the existing SoD other than: (i) the common changes detailed in Section 2; such as the addition of a Chairman's Panel.
- 3.23 The definition of 'Major Applications' would continue to include the commercial developments; and secondary applications that are excluded by Option B. However, it could be that some of these may not be presented to the committee for determination if it is agreed at the Chairman's Panel that they can be dealt with under delegated powers.

Pro:

- Provides a mechanism to allow applications to be dealt with under delegated powers that would otherwise need to be included on the planning committee agenda.

Con:

- Will have the least impact of all options on the length of committee agendas
- Arguably further 'politicises' the process by which applications are referred to the planning committee
- Seeking to convene a Chairman's Panel (or doing one via email exchange) introduces a delay to the process which could impact on the time taken to deal with applications.

4 **Conclusions and Recommendation**

- 4.1 The main drivers for the review (set out in Section 1 above) related to the transparency of the call-in process, and a review to seek the right balance in terms of officer delegation and committee consideration.

- 4.2 As part of the common changes which are included in all options is the adoption of the standardised Councillor call-in form [Appendix 1]. The introduction of this form, together with operational changes to ensure the officers include within their committee reports details of the call-in and the reasoning would fully address the need to improve the transparency of the process.
- 4.3 The introduction of a Chairman's Panel is another common change identified for all the options. This would introduce the benefit of possibly removing the need for some applications to be referred to the committee. It would also (when it is used as a consultative body), to provide a safety net and ensure that proposals that have the scope to trigger wider issues are sent to committee to be dealt with in the most transparent manner if this is considered appropriate.
- 4.4 Of the three options (A, B and C) assessed, it is Option A for a High Delegation Model which has the best outcomes in terms of reducing the size of planning committee agendas and ensuring that only controversial or sensitive matters are dealt with in this manner. The 'con' listed in section 3, that this option would put the onus on local Councillors to call-in applications within their ward that they think should be discussed by the committee is limited and would be significantly outweighed by the benefits derived.
- 4.5 On this basis, the recommendation is that all the common changes and Option A be supported and referred to Full Council for adoption.

Recommendation: That Members' support Option A and refer it to Full Council for adoption and to make the appropriate changes to the Scheme of Delegation.

Appendices

- 1 – Councillor call in form
- 2 – Option A – High Delegation
- 3 – Option B - Medium Delegation
- 4 – Option C – Low Delegation



**Appendix 1
Councillor Planning Application Call in Form**

For determination of a Planning Application by Planning Committee.

Completed Form to be returned to: cllrplanningenquiries@breckland.gov.uk

Councillor Name:

Date of Weekly List: w/e Application Ref No:

Site Address:

Proposed Development:

.....

Members should set out the reason for their call-in with regard to material planning considerations and that their call-in is made if Officers are minded to recommend either: *(please circle – circle both if the request is for the application to be heard irrespective of the recommendation)*

GRANT or REFUSE

Reason for call-in

- To include material planning considerations and relevant development plan policies where possible.
- Advice on material planning considerations is available from the Planning Managers
- This reason will be set out in the committee report

Please Note:

If your reason for seeking a call-in is because you have concerns about aspects of the proposed development, you should consider carefully whether you have predetermined the application or whether you maintain an open mind as to whether planning permission should be granted. If you consider that you have predetermined the application, you cannot sit on the determining committee and can have no further dealings with it. Advice on predetermination and predisposition is available from Council Officers.

Appendix 2

3. Specific Delegations – Option A: High Delegation

Power for the Executive Director in charge of Planning & Development Management as follows:

Planning Applications

- (i) To determine all Planning matters where the Executive Director considers that, on balance, and after taking into account all material considerations including Human Rights Act issues, the decision would be in compliance overall with national planning policies and guidance, and the policies contained in the Local Plan and any Neighbourhood Plans.

The above power is subject to the following:

- a) A weekly list being sent to all Members containing details of Planning Applications received.
- b) The right for a Ward Member in relation to their own or an adjoining Ward and the Chairman of Planning Committee jointly (i.e. if both are in agreement) to require a Planning Application to be referred to and decided by the Planning Committee if the following conditions are met:
- A completed Councillor Call-in form must be submitted to CllrPlanningEnquiries@breckland.gov.uk within 23 days of the publication of that application on the weekly list requesting the referral of the application to the Committee.
 - The request only to have effect if it contains proper planning reasons for consideration by Committee.
 - The Chairman of Planning Committee must agree that the proposed referral to the Committee is appropriate.
- c) Those applications which, in the opinion of the Executive Director and Chairman of Planning Committee, are of particular sensitivity locally can be referred to the Planning committee for determination
- d) All applications submitted by or on behalf of the Council
- e) All applications by Members or Officers of the Council (where the Executive Director is aware that the application is by or on behalf of a Member or Officer).
- f) Chairman's Panel:
Officers can consult with the Chairman's Panel to obtain a view on whether the application can be determined under delegated powers. The Panel is not a decision-making body but it has the power to agree for planning matters that would otherwise have to be referred to the committee to be dealt with under delegated powers if the proposal is not controversial, and (in the view of the Panel) there are no other reasons that it should be heard in a public forum.

The panel can also be used as a consultative body to allow officers to seek a view on whether applications, that would otherwise be dealt with under delegated

powers, represent (in the view of the Panel) planning related impacts that would merit the proposal being heard in a public forum.

The Chairman's Panel shall comprise of a minimum of three Planning Committee members (including Substitute Planning Committee members) and include the Chairman of the Planning Committee or (in their absence) the Vice Chairman of the Planning Committee. There is no maximum level of participants but when the panel is convened with an even number of participants, the Chairman would retain the casting vote.

The panel shall be convened on an ad-hoc basis as required. Membership can change dependant on the availability of qualifying Councillors and will be determined through consultation between officers and the Chairman of the Planning Committee (or the Vice Chairman in their absence). The panel can either be consulted through a meeting or via exchange of correspondence.

- g) The Vice-Chairman of the Planning Committee can exercise the powers of the Chairman in the absence or unavailability of the Chairman.

Appendix 3 – Option B: Medium Delegation

3. Specific Delegations

Power for the Executive Director in charge of Planning & Development Management as follows:

Planning Applications

- (i) To determine all Planning matters (except where officers are minded to APPROVE Major Applications or Significant Applications as defined below) where the Executive Director considers that, on balance, and after taking into account all material considerations including Human Rights Act issues, the decision would be in compliance overall with national planning policies and guidance, and the policies contained in the Local Plan and any Neighbourhood Plans.

The above power is subject to the following:

- a) A weekly list being sent to all Members containing details of Planning Applications received.
- b) The right for a Ward Member in relation to their own or an adjoining Ward and the Chairman of Planning Committee jointly (i.e. if both are in agreement) to require a Planning Application to be referred to and decided by the Planning Committee if the following conditions are met:
 - A completed Councillor Call-in form must be submitted to CllrPlanningEnquiries@breckland.gov.uk within 23 days of the publication of that application on the weekly list requesting the referral of the application to the Committee.
 - The request only to have effect if it contains proper planning reasons for consideration by Committee.
 - The Chairman of Planning Committee must agree that the proposed referral to the Committee is appropriate.
- c) “Major Applications” for the purposes of these delegations are defined as those proposals for:
 - Applications which incorporate the provision of 10 or more dwellings, but excluding proposals that exceed this threshold and are:
 - (i) Reserved Matters applications
 - (ii) Applications for Non-Material amendments
 - (iii) Applications for Minor Material amendments
 - (iv) Applications to add, vary or remove planning conditions
 - (v) Proposals to vary or remove planning obligations
- d) “Significant Applications” will include those which:
 - officers may wish to approve which are contrary to policy subject to the agreement of the Chairman’s Panel that they should be determined by Committee
 - those which, in the opinion of the Executive Director and Chairman of Planning Committee, are of particular sensitivity locally
 - applications submitted by or on behalf of the Council

- all applications by Members or Officers of the Council (where the Executive Director is aware that the application is by or on behalf of a Member or Officer).

e) Chairman's Panel:

Officers can consult with the Chairman's Panel to obtain a view on whether the application can be determined under delegated powers. The Panel is not a decision-making body but it has the power to agree for planning matters that would otherwise have to be referred to the committee to be dealt with under delegated powers if the proposal is not controversial, and (in the view of the Panel) there are no other reasons that it should be heard in a public forum.

The panel can also be used as a consultative body to allow officers to seek a view on whether applications, that would otherwise be dealt with under delegated powers, represent (in the view of the Panel) planning related impacts that would merit the proposal being heard in a public forum.

The Chairman's Panel shall comprise of a minimum of three Planning Committee members (including Substitute Planning Committee members) and include the Chairman of the Planning Committee, or (in their absence) the Vice Chairman of the Planning Committee. There is no maximum level of participants but when the panel is convened with an even number of participants, the Chairman would retain the casting vote.

The panel shall be convened on an ad-hoc basis as required. Membership can change dependant on the availability of qualifying Councillors and will be determined through consultation between officers and the Chairman of the Planning Committee (or the Vice Chairman in their absence). The panel can either be consulted through a meeting or via exchange of correspondence.

- f) The Vice-Chairman of the Planning Committee can exercise the powers of the Chairman in the absence or unavailability of the Chairman.

Appendix 4- Option C: Low Delegation

3. Specific Delegations

Power for the Executive Director in charge of Planning & Development Management as follows:

Planning Applications

- (i) To determine all Planning matters (except where officers are minded to APPROVE Major Applications and Significant Applications as defined below) where the Executive Director considers that, on balance, and after taking into account all material considerations including Human Rights Act issues, the decision would be in compliance overall with national planning policies and guidance, and the policies contained in the Local Plan and any Neighbourhood Plans.

The above power is subject to the following:

- a) A weekly list being sent to all Members containing details of Planning Applications received.
- b) The right for a Ward Member in relation to their own or an adjoining Ward and the Chairman of Planning Committee jointly (i.e. if both are in agreement) to require a Planning Application to be referred to and decided by the Planning Committee if the following conditions are met:
 - A completed Councillor Call-in form must be submitted to CllrPlanningEnquiries@breckland.gov.uk within 23 days of the publication of that application on the weekly list requesting the referral of the application to the Committee.
 - The request only to have effect if it contains proper planning reasons for consideration by Committee.
 - The Chairman of Planning Committee must agree that the proposed referral to the Committee is appropriate.
- c) "Major Applications" for the purposes of these delegations are defined as those proposals for:
 - 10 or more dwellings
 - Residential development on sites of 0.5 hectares or more
 - The provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more
 - Development carried out on a site having an area of one hectare or more
- d) "Significant Applications" will include those which:
 - officers may wish to approve which are contrary to policy subject to the agreement of the Chairman's Panel that they should be determined by Committee
 - those which, in the opinion of the Executive Director and Chairman of Planning Committee, are of particular sensitivity locally
 - applications submitted by the Council
 - all applications by Members or Officers of the Council (where the Executive Director is aware that the application is by or on behalf of a Member or Officer).

e) Chairman's Panel:

Officers can consult with the Chairman's Panel to obtain a view on whether the application can be determined under delegated powers. The Panel is not a decision-making body but it has the power to agree for planning matters that would otherwise have to be referred to the committee to be dealt with under delegated powers if the proposal is not controversial, and (in the view of the Panel) there are no other reasons that it should be heard in a public forum.

The panel can also be used as a consultative body to allow officers to seek a view on whether applications, that would otherwise be dealt with under delegated powers, represent (in the view of the Panel) planning related impacts that would merit the proposal being heard in a public forum.

The Chairman's Panel shall comprise of a minimum of three Planning Committee members (including Substitute Planning Committee members) and include the Chairman of the Planning Committee, or (in their absence) the Vice Chairman of the Planning Committee. There is no maximum level of participants but when the panel is convened with an even number of participants, the Chairman would retain the casting vote.

The panel shall be convened on an ad-hoc basis as required. Membership can change dependant on the availability of qualifying Councillors and will be determined through consultation between officers and the Chairman of the Planning Committee (or the Vice Chairman in their absence). The panel can either be consulted through a meeting or via exchange of correspondence.

f) The Vice-Chairman of the Planning Committee can exercise the powers of the Chairman in the absence or unavailability of the Chairman.

IMPLICATIONS

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Other.