

BRECKLAND DISTRICT COUNCIL

Report of: Deputy Leader and Executive Member for Governance, Executive Member for Planning, and Executive Director Strategy and Governance

To: Full Council – 18 July 2019

Author: Jacqui Berridge - Lawyer

Subject: Constitution – Determination of Planning Applications

Purpose: To consider the decision of the Planning Committee to amend the existing delegations to officers in relation to the determination of planning applications

Recommendation(s):

- 1) That paragraph 3 of Part 3 Section F3 of the Constitution be amended as shown in Appendix A in order to extend the current scheme of delegation to officers to determine planning applications, including the establishment of a Chairman's Panel, in accordance with the decision of the Planning Committee held on 8 April 2019; and
- 2) That the additional minor changes shown in Appendix B also be approved.

1.0 BACKGROUND

1.1 Under Article 14 of the Council's Constitution, changes to the Constitution may only be approved by the full Council unless, in the reasonable opinion of the Monitoring Officer, a change is:

- (a) a minor variation; or
- (b) required to be made to remove any inconsistency or ambiguity; or
- (c) required to be made so as to put into effect any decision of the Council or its committees or the Cabinet,

in which case the Monitoring Officer may make such a change and such change shall come into force with immediate effect but shall (unless a minor typographical, referencing or numbering change) be referred to full Council as soon as is reasonably possible and shall continue to have effect only if full Council agree. Minor typographical, referencing and numbering changes shall not require the approval of full Council.

1.2 This report relates to a decision made by the Planning Committee at its meeting on 8 April 2019 to amend the existing scheme of delegation to officers, and to establish a Chairman's Panel. This decision necessitates changes to the Constitution. As described in paragraph 1.1(c) above, these changes may be made by the Monitoring Officer immediately, but the changes must be referred to full Council and shall continue to have effect only if full Council agrees the changes.

2.0 PLANNING COMMITTEE DECISION

2.1 Local authorities make numerous decisions every day, and in order to ensure efficiency in the making of such decisions local authorities have power to arrange for the discharge of

any of their functions to officers. This is usually in compliance with approved policies and/or procedures.

- 2.2 In spring 2018 the Council was subject to a Peer Review of the Planning Committee undertaken by the Local Government Association and the Planning Advisory Service. The Peer Review recommended, amongst other things, that the Council should regularly review delegations to officers to determine planning applications, and the ability of councillors to request applications to be submitted to the Planning Committee for determination (called "Planning Committee call-in"), with a view to finding a balance between officer delegations and the opportunity for non-major but controversial applications to be submitted to Committee for consideration. The Planning Committee at its meeting on 8 April 2019 considered these recommendations.
- 2.3 Part 3 Section F3 of the Council's Constitution (Delegations to Executive Directors) sets out the functions relating to planning applications that are currently delegated to officers by the Planning Committee. The report submitted to the Planning Committee on 8 April 2019 explained the processes involved when planning applications were determined by the Planning Committee, and when they were determined by officers with delegated authority. The report also highlighted the percentage of planning applications determined under delegated powers nationally (94%), within Norfolk (between 92% and 96%), and at South Holland District Council (93%). Breckland Council, at 88%, was significantly below these figures.
- 2.4 Whilst it was essential that appropriate planning applications were submitted to the Planning Committee, applications submitted to Committee were more expensive to deal with and took longer to process than applications dealt with by officers under delegated powers. The Peer Review had therefore concluded that an exception policy might be appropriate where all applications were delegated to officers unless certain criteria were met. With this in mind the Planning Committee considered the following options which were described fully in the report to the Planning Committee;
- Option A – high level of delegation – all planning applications are dealt with by officers unless they are called-in or they trigger a small list of criteria, and including the establishment of a Chairman's Panel
 - Option B – medium level of delegation – all planning applications are dealt with by officers unless they are called-in or they trigger a larger list of criteria that would require applications recommended for approval to be referred to the Planning Committee automatically and including the establishment of a Chairman's Panel
 - Option C – low level of delegation – maintaining the existing position but subject to the establishment of a Chairman's Panel
- 2.5 The Planning Committee resolved to introduce Option A, which would have the effect of amending the current delegations detailed at Part 3 Section F3 of the Constitution as shown at Appendix A. The proposed amendments clarify that a standardised Planning Committee call-in form would be used to ensure that all referrals to the Planning Committee were dealt with in a standardised way, and the purpose of the proposed Chairman's Panel was explained as part of the proposed amendments.
- 2.6 If the Council agrees the variations detailed in Appendix A, some further minor changes to the Constitution will also be required as shown in Appendix B.

3.0 OPTIONS

- 3.1 That the Constitution be amended, as shown at Appendix A and Appendix B to this report, to take into account the decision of the Planning Committee at its meeting on 8 April 2019 to adopt Option A. This option is recommended.
- 3.2 That the Constitution is not amended. This option is not recommended. If members do not agree to the proposed amendments then the matter will need to be referred back to the Planning Committee for further consideration.

4.0 REASONS FOR RECOMMENDATION(S)

- 4.1 The Planning Committee considered the outcome of a Peer Review of the Planning Committee which, amongst other things, recommended changes to the Council's existing scheme of delegation, and referred to the introduction of a Chairman's Panel, in order to make the planning service more efficient and effective.
- 4.2 It is recommended that the Constitution be amended to take account of the decision of the Planning Committee to adopt Option A as described in the report to the Planning Committee held on 8 April 2019, which will deliver the recommendations of the Peer Review.

5.0 EXPECTED BENEFITS

- 5.1 If approved, the changes to the Constitution will allow more planning applications to be dealt with by officers under the scheme of delegation, whilst still allowing members to request that appropriate applications be submitted to the Planning Committee for consideration. This will allow the planning service to be delivered in a more effective and efficient manner whilst still enabling contentious applications to be submitted to the Planning Committee for consideration.

6.0 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. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

6.1 Constitution & Legal

- 6.1.1 Any amendments to the Constitution approved by the Planning Committee must be agreed by full Council.

7.0 WARDS/COMMUNITIES AFFECTED

- 6.1 All

8.0 ACRONYMS

- 8.1 n/a

Background papers:- Report to Planning Committee held on 8 April 2019 entitled
“Revisions to the Scheme of Delegations” and associated minute
47/19 which can be found on the Council’s website

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Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service

Appendices attached to this report:

- Appendix A Proposed amendments to Part 3 Section F3 of the Constitution arising from the decision of the Planning Committee held on 8 April 2019 to extend the scheme of delegation to officers and to introduce a Chairman’s Panel.
- Appendix B Further amendments to Part 3 Section D of the Constitution – Delegations to Committees

APPENDIX A

PROPOSED AMENDMENTS TO PART 3 SECTION F3 OF THE CONSTITUTION ARISING FROM THE DECISION OF THE PLANNING COMMITTEE HELD ON 8 APRIL 2019 TO EXTEND THE SCHEME OF DELEGATION TO OFFICERS AND TO INTRODUCE A CHAIRMAN'S PANEL

Proposed amendments to Paragraph 3 of Part 3 of Section F3

(Amendments are shown in ***bold underlined italics*** and ~~strikethrough~~)

“3. Specific Delegations

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

Planning Applications

(i) To determine all Planning Applications ~~(as defined below)~~ ~~(except 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 provided 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 ***Councillor Planning Committee call-in form must be submitted to CllrPlanningEnquiries@breckland.gov.uk*** completed written notice must be received from the Ward Member by the Executive Director or Principal Planning Officer 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 being referred to the Planning Committee for determination subject to f) below.***
- 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) being referred to the Planning Committee for determination subject to f) below.***

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 applications 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.

- c) ——— “Planning Applications” for the purposes of these delegations include
- applications, notifications or consultations in connection with the following:
 - applications for or in connection with planning permissions (including those for amendments),
 - applications for permission in principle and associated technical details consent,
 - advertisement consents,
 - listed buildings,
 - conservation area consents,
 - demolitions,
 - overhead power lines,
 - telecommunications,
 - applications or notifications from public authorities,
 - agricultural notifications,
 - minor amendments
 - variation or removal of conditions

d) “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

e) “Significant Applications” will include those which

- ~~officers may wish to approve which are contrary to policy~~
- ~~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).~~

g) The Vice-Chairman of the Planning Committee can exercise the powers of the Chairman under 1B above in the absence or unavailability of the Chairman.

APPENDIX B

FURTHER AMENDMENTS TO PART 3 SECTION D OF THE CONSTITUTION - DELEGATIONS TO COMMITTEES

DELEGATIONS TO COMMITTEES (NON-EXECUTIVE FUNCTIONS)		
Planning Committee	12 Members (Quorum 4) (SO No. 38)	<p>1. To carry out any of the Council's functions under town and country planning development legislation including all town and country planning and development functions listed at Schedule 1 to the 2000 Regulations and high hedges issues listed at the said Schedule 1 other than:</p> <p>(a) those reserved to full Council, (b) Powers reserved to the Executive as specified by legislation from time to time.</p> <p>2. The following function, detailed at Schedule 2 of the 2000 Regulations, is reserved to the Planning Committee:-</p> <ol style="list-style-type: none"> 1. The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land 2. To consider objections to Tree Preservation Orders 3. To confirm or refuse to confirm opposed Tree Preservation orders 4. To determine applications to pollard or fell trees which are considered by the relevant Director after consultation with the relevant Cabinet Member to be of extreme public importance or likely to set a precedent for applications 5. Where an item included on an agenda of a meeting of the Planning Committee relates specifically to a ward of the district that a ward member although not being a member of the Committee, may nevertheless attend that meeting and take part in any debate on the item, but not vote on them. <p>3. The functions of this Committee also include:</p> <ul style="list-style-type: none"> • Public Footpaths, Bridleways and Highways • Commons • Functions relating to public rights of way (in so far as they relate to District Council functions) • Powers relating to the protection of important hedgerows • Powers relating to the preservation of trees <p><u>Chairman's Panel</u></p> <p><u>Officers can consult with the Chairman's Panel to obtain a view on whether any planning application can be determined by officers under delegated powers. The Panel is not a decision-making body but it has the power to agree for planning applications 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 any planning applications, that would otherwise be dealt with under delegated powers,</u></p>

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 comprises a minimum of three Planning Committee members (including Substitute Planning Committee members) and includes 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 retains the casting vote.

The Panel shall be convened on an ad-hoc basis as required. Membership can change dependent 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.