

BRECKLAND DISTRICT COUNCIL

Report of the Executive Members for Planning, Housing & Public Protection and Assets & Strategic Development

To: Planning Committee

Author: Paul Jackson

Subject: Proposed Changes to Delegated Arrangements in light of the introduction of the Planning Guarantee.

Purpose: To amend the Council's Delegated Arrangements in order to facilitate speedier decision-making and enable Members at Planning Committee to focus their attention on dealing with locally contentious schemes

Recommendations:

- (a) To amend the Council's Delegated Arrangements as set out at Appendix One

1. BACKGROUND

- 1.1 At Planning Committee held on 11 March 2013 Members considered a report relating to proposed revisions to the Council's existing Delegated Arrangements in light of the then intended introduction of the Planning Guarantee. Members also considered proposals to refine the existing Ward Member Call-In Protocols. This report is attached at Appendix Two.
- 1.2 Following a fulsome discussion, Members resolved to recommend to Council that:
- (1) the amendments to the Council's Delegated Arrangements, as set out in Appendix One of the report, be approved; and
 - (2) the Ward Member Call-In protocols contained in the revised Delegation Arrangements and the use of the Ward Member Call-In Request form (set out in Appendix Two of the report) be approved.
- 1.3 The Minutes to Planning Committee held on 11 March 2013 are attached at Appendix Three.
- 1.4 At a meeting of the Council held on 11 April 2013 Members considered the above. They resolved that:
- The report be referred back to Planning Committee for further work and future reference to the Council.
- 1.5 The Minutes to Full Council held on 11 April 2013 are attached at Appendix Four.
- 1.6 The government has now clarified that the Planning Guarantee will be introduced on 1 October 2013. It will therefore become effective tomorrow.
- 1.7 The previously reported implications relating to the repayment of planning fees will be

introduced unchanged. In effect, from tomorrow all planning applications processed by Breckland Council will need to be determined within 26 weeks unless otherwise agreed in advance and in writing with the applicants. Failure to do so will result in the Council having to pay back to the applicant the originally submitted planning fee. Further, the Council will still have to continue to determine the application; effectively for free. This legislative change, as previously reported, has the clear potential to seriously and adversely impact on a key element of the Council's income stream associated with planning applications.

1.8 Members will recall that, at Planning Committee held on 11 March 2013, I previously advised that:

- 'Major' applications brought in 60% of the Council's fee income in 2011-12. This equated to some £639,292 out of a total fee income of £1,011,938.
- 75% of 'Major' applications were determined within 26 weeks in 2011-12. Or, put more succinctly, 25% were not.
- Had the Planning Guarantee been in place in 2011-12, the Council would have been required to repay, at the very least, £159,823 back to the applicants.
- This would have resulted in at least a 16% drop in fee income.

1.9 The Planning Guarantee applies to all applications, not just 'Majors'. However, 'Majors' are by far the highest income generators as fees are generally calculated by the size of either the building or the land parcel.

1.10 I further advised that:

- There was no need for all 'Major' applications to be determined by Planning Committee as many were of themselves uncontentious.
- The Council's requirement for all 'Majors' to be determined by Planning Committee slowed down the processing of a good number of 'Major' applications and was, in my view, quite clearly counter-intuitive to a growth agenda.

1.11 'Major' applications are defined by the government as those which seek permission for:

- 10+ dwellings or residential development on sites of 0.5 hectares and over
- office/light industrial development of 1,000 sqm or on sites of greater than 1.0 hectares
- general industrial development of 1,000 sqm or on sites of greater than 1.0 hectares
- retail development of 1,000 sqm or on sites of greater than 1.0 hectares
- gypsy/traveller sites with 10 or more pitches.

1.12 At Council, Members expressed the view that current Delegation Agreements worked well and equally expressed concern at the potential for increased officer delegation at the expense of local democracy. Whilst I share Members views regarding the need for transparency of process and the need to be locally and democratically accountable, these issues are not inconsistent with the advice I was giving Members.

1.13 The advice in my earlier report to Planning Committee was predicated on two matters, these being;

- (1) the potential financial consequences to the Council of then impending (and now imminent) legislative change; and
- (2) a desire to introduce delegated arrangements which facilitated a process whereby

Members of Planning Committee were able to better focus their attentions on locally contentious schemes, rather than on those which fell into the simple governmental definition of 'Major' applications.

- 1.14 The purpose of this report is to respond to the concerns raised at Council and put forward the case for revised delegations.
- 1.15 It is, at this stage, worth noting the wider context that an effective planning system plays a vital part in supporting growth – promoting and enabling the homes, jobs and facilities that communities need, and minimising uncertainty and delay for those proposing or affected by development. The Government has continued to signal its clear intention to ensure that the planning process responds to and meets with the growth agenda. Against this background the government has introduced legislative change and as of 1 October 2013 the Planning Guarantee becomes effective.
- 1.16 **PURPOSE**
- 1.17 To clarify to Members the consequences of the Planning Guarantee and to amend the Council's Delegated arrangements in light of this whilst maintaining a process which enables Members to focus their attention on locally contentious planning matters.
- 1.18 In tandem with the above, to enable the Council to respond positively to the growth agenda, to facilitate the timely determination of planning applications, to promote greater certainty in the development industry, to facilitate deliverability, and to maintain a decision-making process which is of itself robust.
- 1.19 **THE PLANNING GUARANTEE**
- 1.20 The premise of the introduction of the Planning Guarantee on 1 October 2013 is a simple one. In effect, this Council in common with all others will be required to determine all applications for planning permission within 26 weeks of valid receipt. Failure to do so will result in the Council being required to reimburse the whole of the application fee back to the applicant. The Council will thereafter still be required to determine the application, at its own expense, and to defend its decision at appeal if necessary, again with no associated income stream. The only circumstances in which the Planning Guarantee would not ratchet into place would be those occasions in which the Council was able to formally agree an extension of time with the applicant. This may be in the applicant's interests for complicated schemes such as the Thetford SUE application or those applications that were heading towards a likely approval subject to a S106 agreement. In other circumstances, and certainly in the context of relatively straightforward applications, it would be unlikely to be in the applicant's interests to agree to an extension of time. This will put pressure on the Council to issue decisions in timely fashion.
- 1.21 **PROPOSED CHANGES TO DELEGATED ARRANGEMENTMENTS**
- 1.22 My earlier report to Planning Committee and thereafter Council proposed that the existing Delegated Arrangements be altered to remove the requirement for uncontentious 'Major' applications to be determined at Planning Committee. My rationale was that this would better manage financial risk. It would at the same time enable the Council to more properly focus its attentions on dealing with locally contentious development proposals.
- 1.23 The Council's existing Delegated arrangements require ALL 'Major' applications to be determined at Planning Committee. My proposals, insofar as they related to 'Major' applications, were to introduce changes to the current scheme of delegation that would

enable uncontentious 'Major' applications to be determined by officers. This system of delegation is commonplace nationally.

1.24 In terms of detail, and as above, the current Delegation Agreement requires ALL 'Major' applications to be determined at Planning Committee. The current Delegated arrangements clarify that:

1D "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.

1.25 My proposals were to amend the current Delegated arrangements with the addition of the following text, highlighted in red;

1D "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;

subject to the provisos that only those 'Major Applications' which are considered to be;

- (a) strategically significant;
- (b) novel or controversial in nature; or
- (c) the subject of significant public comment contrary to the recommendation of officers

need to be determined by Planning Committee.

1.26 In effect, I was seeking to retain the requirement for "Major" applications to be determined at Planning Committee UNLESS they were uncontentious and recommended in line with policy. Those 'Major' applications which were strategically significant, which were novel or controversial, or which in the alternative had attracted significant public comment contrary to the recommendation of officers would, and ought quite properly, continue to be determined by Members at Planning Committee.

1.27 In addition, it would remain within the Chairman's gift to require a "Major" application to be determined at Planning Committee if there was otherwise cause for concern and it would remain incumbent upon me as Planning Manager to liaise with the Chairman accordingly.

1.28 Under this system, there would be more rather than less scope for Members to consider those applications which were the real cause of local concern as the Ward Member protocol would continue to enable Members to Call-In applications (this including otherwise uncontentious "Major" applications) if there were good planning grounds for doing so. Public transparency and even-handedness of process are generally sufficient grounds on which to exercise this discretion.

1.29 **POTENTIAL CONSEQUENCES OF PROPOSED CHANGES TO THE DELEGATED ARRANGEMENTS**

- 1.30 In order to highlight the potential consequences of introducing the above changes I have analysed the complete agenda's for the previous two years Planning Committees. This analysis highlights that during the period 3 October 2011 through to 2 September 2013 Planning Committee met 26 times. During this period Members considered 209 individual applications of which 114 fell into the category of 'Majors'. Of these 114 'Majors' a total of 45 would have fallen into the category of 'uncontentious' 'Major' applications. These applications ranged from poultry units to extensions of time limits. They included applications for irrigation reservoirs, onion buildings, agricultural sheds, warehousing on allocated industrial sites and applications for residential development on unallocated land to which there was substantial local objection and the recommendation was for refusal. All of these applications had one thing in common. They were either uncontentious in that no objections of substance had been received and they were recommended for approval; or they were the subject of considerable local objection and contrary to policy and therefore recommended for refusal. The latter category was by far the fewer.
- 1.31 On analyzing these statistics further, it is noteworthy that of these 45 individual 'Major' applications not a single one was determined by Members other than in accordance with the recommendation of officers. Furthermore, the overwhelming majority received very little or no public comment and the Minutes clearly record that there was no or very little Member debate. These types of applications, to my mind, did not and in future do not need determining at Planning Committee.
- 1.32 It is therefore clear that the current system requires uncontentious 'Major' applications to be determined at Planning Committee in instances where the applications themselves are entirely consistent with Council policy and where the applications themselves have resulted in no or very little public comment. At Planning Committee itself these uncontentious 'Major' applications have been the subject of very little or no debate and not a single one of the 45 cases I have highlighted over the past two years was amended, deferred or over-turned.
- 1.33 Further, none of these 45 applications raised any issues of local concern, other than to the applicants themselves, other than those few that were recommended for refusal in line with policy. There was therefore no consequence on issues of local democracy.

1.34 **THE CONSEQUENCES OF CARRYING ON AS WE ARE**

- 1.35 Cumulatively, the 45 uncontentious 'Major' applications highlighted above attracted between them a combined fee income of some £264,961. If these applications are unacceptably delayed this, as a direct consequence of the introduction of the Planning Guarantee, puts the Council at significant risk of repaying the associated fees. Whilst this would be unlikely to be the consequence in all instances, 'Major' applications of themselves attract significant fees. These fees are calculated on the basis of floorspace rather than either complexity or contentiousness. The nomenclature of 'Major' is therefore often entirely misleading. Further, 'Major' applications are commonly the subject of associated S106 agreements and they can therefore take time to conclude beyond resolution. In my view, the current Delegation arrangements place the Council in the position of being at risk of repaying the fees associated with uncontentious 'Major' applications. On the basis of the previous two years income figures, the current delegation arrangements are putting the Council at clear risk of repaying in the order of £130,000 back to applicant's annually. This risk, insofar as it relates to uncontentious 'Major' applications, is wholly unnecessary and entirely avoidable.

- 1.36 A further consequence of the current Delegated arrangements is that the requirement for all “Major” applications to be determined at Planning Committee means that many remain undetermined beyond the prescribed 13 week period within which they should be determined. This puts the Council at risk in relation to defending unnecessary appeals – thereby introducing further process costs which are of themselves often expensive.
- 1.37 An attendant consequence is that the present Delegation arrangements have undoubtedly contributed to adversely affecting the Council’s quarterly statistical returns to DCLG. They are not the whole cause but the current arrangements increase rather than diminish the likelihood of the Council falling into the category of a poorly performing authority. The direct consequence of the latter would be that the Council would derive no fee income whatsoever from planning applications as they would thereafter be determined centrally by the Planning Inspectorate.
- 1.38 To conclude on this point, it needs to be understood that the Council currently only determines 45% of all ‘Major’ applications within the 13 week statutory timeframe. These figures are taken from the latest published DCLG statistical returns data published on 28 June 2013. This is poor and an element of this poor performance is directly attributable to the current delegation arrangements. Furthermore, this represents a downward trend as the two yearly figures presently stand at 59%. To continue in this vein can only increase the risks of the authority falling into the category of poorly performing, at which point applicants can submit applications (and their associated fees) directly to the Planning Inspectorate. This would significantly diminish local accountability as well as significantly and adversely impacting on fee income.
- 1.39 A further consequence of the requirement for uncontentious ‘Major’ applications to be determined at Planning Committee is that this significantly slows down the processing of what are, after all, fairly straightforward development proposals. This is entirely inconsistent with, and counter-intuitive to, any form of growth agenda. It stifles rather than promotes business opportunity and gives a poor impression of the Council as local planning authority to the commercial and agricultural sectors. It certainly does not inspire confidence within these sectors and has the added consequence of lessening the chances of bringing forward within reasonable timeframes local development and its attendant employment opportunities. My honest view is that within such a climate businesses may consider investing in or locating/relocating elsewhere. My further view is that the present arrangements are disadvantaging existing local commercial and agricultural businesses.

1.40 **THE ADAVANTAGES OF AMENDING THE CURRENT DELEGATED ARRANGEMENTS**

1.41 The immediate advantages to amending the current delegation arrangements are the opposite of the disadvantages highlighted above. In a nutshell they would result in:

- Speeding up the process
- Boosting confidence in the growth agenda
- De-risking fee retention in relation to uncontentious ‘Majors
- Lessening the chances of the Council falling into the ‘Poorly Performing’ category
- Reducing the risk of losing both local accountability and income generation

1.42 There are further additional advantages. These centre on:

- Freeing up resource to deal more expeditiously with contentious ‘Majors’
- Reducing the burden on Members at Planning Committee
- Better enabling Members at Planning Committee to focus their attentions on those applications that are strategically significant, controversial or locally sensitive, or the

subject of significant local commentary contrary to the recommendation of officers

1.43 I commend these proposed changes to the Council's current Delegated arrangements to Members for all of the reasons highlighted above.

1.44 In doing so I would again refer Members to the full content of the report I previously put before both Planning Committee and Council. Again, and for ease of reference, this is attached at Appendix Two.

1.45 **MEMBER CALL-IN PROCEDURES**

1.46 My earlier report additionally considered Member Call-In Protocols. I reminded Members that the current delegated arrangements facilitate a route whereby Ward Members, in conjunction with the Chairman (or Vice Chairman in his absence), can require an application to be referred to and determined by the Planning Committee. I clarified that this right is presently only exercisable if;

1. Written notice is received by the Director within 23 days of the publication of the weekly list;
2. The request for referral sets out proper planning reasons why the application ought to be considered by Planning Committee; and
3. The Chairman (or Vice Chairman in his absence) agrees the request is appropriate

1.47 I advised Members that these arrangements have proven themselves to be eminently workable but that they are open to loose interpretation and ought to be better framed. In this regard I was simply seeking to introduce an appropriate and evidential audit trail.

1.48 Members were of the view that as the present system works well there is no need to change it. I do not disagree with this view given that Members are elected to represent their Wards and both Parish Councils and residents seek their support to call in applications for proper planning reasons. Indeed, it is probably prudent to allow time for the proposed revised Delegated arrangements relating to 'Major' applications to bed-in before revisiting this matter. In short, I can agree that so long as Members remain of the view that the present Member referral process continues to be both workable and appropriate then there is little need to over-complicate it by introducing an additional and perhaps unnecessary Protocol.

2. **OPTIONS**

2.1 **Do Nothing**

2.2 To continue with the present delegated arrangements would fail to address timeliness in the context of determining applications and, in the context of uncontentious 'Major' applications, would significantly and unnecessarily increase the risk of the Council as LPA paying back a substantial element of it's present fee income. It would also significantly increase the risk of the Council being perceived externally as failing to react positively to the growth agenda; and could indeed act as a clear disincentive for developers to do business with the Council. There is the attendant risk that doing nothing increases the risk of the Council being less able to successfully defend appeals relating to 'Major' applications when non-determination appeals were submitted. Further risks centre on increasing the likelihood of the Council performing poorly in a national context. The consequential associated risks and financial implications have been highlighted above.

2.3 **Accept the Recommendation, with or without amendment**

2.4 For all the reasons set out in this and my earlier report, the above recommendation is considered the most appropriate response to the imminent financial implications of the introduction of the Planning Guarantee. It responds to the need for timeliness in decision-making. It also ensures that the Council's processes remain robust and transparent and that they continue to operate in the public interest.

3. **REASONS FOR RECOMMENDATION**

3.1 To better respond to the government's growth agenda; to address the need for timeliness in all decision-making process; to better prepare the Council to play a vital part in supporting growth by promoting and enabling the homes, jobs and facilities that communities need; to minimise uncertainty and delay for those proposing or those affected by development; and to reduce the risk of a significant loss in fee-income which would fetter the Council's continued ability to effectively deliver and resource its planning service.

4. **EXPECTED BENEFITS**

4.1 To better enable the Council to respond positively to the growth agenda by delivering greater certainty to the development industry and ensuring clarity for the District's residents; to facilitate speedier decision-making processes; to ensure that the most significant, contentious, locally sensitive or novel applications continue to be determined by Members at Planning Committee; to reduce the risk of significant loss of income; and to consequentially increase the likelihood of the Council being able to continue to properly resource its planning functions in future.

5.0 **IMPLICATIONS**

- a. **Legal:** The proposed recommendations minimise the legislative risks associated with doing nothing.
- b. **Risks:** The proposed recommendations minimise the legal, financial and process risks associated with doing nothing.
- c. **Financial:** The proposed recommendations react to the need to ensure financial probity and better place the Council to continue to deliver its statutory planning functions.
- d. **Timescales:** Effective immediately, following endorsement by Full Council.
- e. **Equality and Diversity:** No implications.
- f. **Stakeholders / Consultation:** This report is in the public domain and reacts positively to the government's growth agenda. The anticipated changes to the legislative regime will require the Council to implement its content. There will be no requirement to formally engage or consult with stakeholders as the legislative aim is to facilitate transparency of process and to introduce timeliness and greater certainty.
- g. **Contracts:** The Council's planning services are delivered under contract by Capita Symonds. It will be incumbent upon both the Council and its contractors to meet

with the requirements of legislative change through the formal process that is Contract Monitoring Board.

h. **Section 17, Crime & Disorder Act 1998:** No implications.

6. **WARDS/COMMUNITIES AFFECTED:** All wards.

Background papers:-

The Department for Communities and Local Government's Newsletter dated August 2013 is available electronically at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229351/Chief_Planners_Newsletter_-_August_2013.pdf

The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013 is available electronically at:

<http://www.legislation.gov.uk/ukdsi/2013/9780111539293/contents>

The Department for Communities and Local Government's Planning Guarantee Monitoring Report 2011-12 is available electronically at:

<https://www.gov.uk/government/publications/planning-guarantee-monitoring-report>

Her Majesty's Treasury's Department for Business and Innovation Skills' Plan for Growth 2011 is available electronically at: http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf

Her Majesty's Treasury's Department for Business and Innovation Skills' Plan for Growth: Implementation Update (March 2012) is available electronically at:

http://cdn.hm-treasury.gov.uk/growth_implementation_update.pdf

The Department for Communities and Local Government's consultation on Planning Performance and the Planning Guarantee is available electronically at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14961/Planning_performance_and_the_planning_guarantee_-_Consultation.pdf

The Planning Inspectorates Statistical Report England 2011-12 is available electronically at:

http://www.planningportal.gov.uk/uploads/pins/statistics_eng/stats_report_final_2011_2012.pdf

The Final Report of the Killian Pretty Review, Planning Applications: A Faster and More Responsive System (November 2008) is available electronically at:

http://www.planningportal.gov.uk/uploads/kpr/kpr_final-report.pdf

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Director/Officer who will be attending the Meeting:

Paul Jackson

Key Decision – Yes

Appendices attached to this report:

Appendix One – Proposed revised Delegated Arrangements

Appendix Two – Report to Planning Committee dated 11 March 2013

Appendix Three – Extract from Minutes of Planning Committee held on 11 March 2013

Appendix Four – Extract from Minutes of Council held on 11 April 2013

APPENDIX ONE

Proposed revised Delegated Arrangements

- 1.1 Delegated authority is given to the Director, **Assistant Director, Head of Service and his Deputy** to:

Issue all decisions for Planning Applications (as defined below) except those applications which are of a major or significant nature (as defined below) where the Director, **Assistant Director, Head of Service or his Deputy** considers that, on balance, and after taking into account all material considerations including Human Rights Acts issues, the decision would be in compliance overall with the policies contained in the Local Plan, ~~the Structure Plan~~ and Government guidance.

The above power is subject to the following:

- 1A A weekly list being sent to all Members containing details of Planning Applications received.
- 1B 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:
- (i) A written notice must be received from the Ward Member by the Director, **Assistant Director, Head of Service or his Deputy, Capita Symonds' Director of Planning and Business Manager 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.
 - (ii) The request only to have effect if it contains proper planning reasons for consideration by Committee.
 - (iii) The Chairman of Planning Committee must agree that the proposed referral to the Committee is appropriate.
- 1C. "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); 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
- 1D "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;

subject to the provisos that only those 'Major Applications' which are considered to be;

(a) strategically significant;

(b) novel or controversial in nature; or

(c) the subject of significant public comment contrary to the recommendation of officers

need to be determined by Planning Committee.

1E "Significant Applications" will include those which

§ officers may wish to approve which are contrary to policy or the provisions of the National Planning Policy Framework (as amended or subsequently amended).

§ those which, in the opinion of the Director, Assistant Director, Head of Service or his Deputy and the Chairman of Planning Committee, are of particular sensitivity locally

§ applications submitted by the District Council

§ all applications by Members or Senior Officers of the Council or staff employed directly or indirectly by the District Council in the capacity of facilitating the discharge of its statutory planning functions (where the Director is aware that the application is by or on behalf of a Member or Officer. Senior Officers of the Council accord to those employed at Head of Service level or above.

1F. 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.

2. Power for the Director, Assistant Director, Head of Service and his Deputy to make decisions as necessary for the processing of applications, including any decision required under the Habitats Regulations and Environmental Impact Assessment Regulations.

APPENDIX TWO

BRECKLAND DISTRICT COUNCIL

Report of the Executive Members Planning and Environmental Services and for Assets and Strategic Planning

To: Planning Committee

Author: Paul Jackson

Subject: Delegated Arrangements and the Planning Guarantee

Purpose: To amend the Council's Delegated Arrangements and clarify Member Call-In Protocols in anticipation of the introduction of the Planning Guarantee

Recommendations:

- (c) To amend the Council's Delegated Arrangements as set out at Appendix One; and
- (b) To adopt, with or without amendments, the revised Ward Member Call-In protocols contained in the revised Delegation Arrangements and the use of the Ward Member Call-In Request Form attached at Appendix Two.

3. BACKGROUND

3.1 An effective planning system plays a vital part in supporting growth – promoting and enabling the homes, jobs and facilities that communities need, and minimising uncertainty and delay for those proposing or affected by development. The Government has signaled its clear intention to ensure that the planning process responds to and meets with the growth agenda.

3.2 PURPOSE

3.3 Breckland Council needs to be in a position to respond positively to the growth agenda. An essential component of responsiveness is the need to ensure that the Council's planning processes facilitate timely determination of planning applications. The development industry reacts negatively to uncertainty and delay. Greater certainty is created by a positive approach to appropriate and sustainable growth. Timeliness, and therefore deliverability, is achieved by ensuring that applications are determined as quickly as practicably possible, cognisant of the need to ensure that the decision-making process is of itself robust.

3.4 THE PLAN FOR GROWTH

3.5 The government's Plan for Growth (March 2011) was published alongside the 2011 Budget. It's overarching policy ambitions centred on making the UK the best place in Europe to start, finance and grow business and to encourage a more balanced economy. The 2011 Budget recognised that the planning system can deter development and growth. In tandem with the introduction of the presumption in favour of sustainable development now encapsulated in the National Planning Policy Framework, the Plan for Growth set out the government's intention to streamline the planning system. This included the intention

to introduce the Planning Guarantee, a commitment to ensuring that the end-to-end processing of all applications and appeals would take no longer than 12 months.

3.6 The Plan for Growth was updated in March 2012 consequent upon the 2011 Autumn Statement. The 2012 update highlighted that the government would introduce a number of measures to streamline the planning applications and related consents regimes and that these would be aimed at bureaucracy from the system and speeding it up. This included the commitment to introducing the Planning Guarantee.

3.7 **THE PLANNING GUARANTEE**

3.8 The principle of the Planning Guarantee is simple: that no planning application – major or otherwise – should take more than a year to decide, even where a planning appeal has been made. It will not replace the statutory time limits for determining applications, which should continue to be met wherever possible, but instead seeks to provide a ‘long-stop’ date by which any schemes that take longer (or which involve a planning appeal) should be determined.

3.9 In practice the Guarantee will mean that cases should spend no more than 26 weeks with either the local planning authority or, in the case of appeals, the Planning Inspectorate. This gives both decision-making bodies an equal maximum time to come to a view, limiting the risk that over-runs with one part of the process might restrict the scope for the Guarantee to be met. A similar 26 weeks limit would in future apply to the Planning Inspectorate where it is determining planning applications submitted to it directly as a result of proposals in the Bill.

3.10 The Guarantee is likely to apply to the time a valid application spends with these decision-making bodies. It will not cover the period before an application is submitted, after permission is granted, or any time between the local planning authority’s decision and any subsequent decision by the applicant to appeal. This is because the behaviour of applicants can have a significant bearing upon the length of these periods; for example, they have up to six months to decide whether to lodge an appeal against a refusal (12 weeks in the case of householder applications).

3.11 There are a small number of cases that, exceptionally, the government proposes to exclude from the scope of the Planning Guarantee. These are:

- Applications subject to Planning Performance Agreements, due to the bespoke timetables involved.
- Appeals subject to the same bespoke arrangements
- Appeals relating to enforcement cases or which involve re-determinations following successful Judicial Review.

3.12 There is presently no mention of situations where the determination of a planning application is delayed in tandem with the applicant in relation to agreeing the terms of, for example, section 106 agreements. It must therefore be assumed that applications subject to S106 agreements will also fall within the scope of the Guarantee, although Planning Performance Agreements/Post-Application Agreements may provide a mechanism whereby this situation can be resolved or effectively managed.

3.13 The simple consequence of introducing the Planning Guarantee is that all applications will need to be determined by individual local planning authorities within a maximum 26 weeks

timeframe, unless otherwise agreed between the respective parties.

- 3.14 The potential further consequence is a very real financial one - if an individual local planning authority fails to comply with the 26 week 'long-stop' timeframe, there will be a statutory requirement to pay back the planning fee to the applicant; and to thereafter continue to determine the application, perhaps at appeal. This has severe potential implications on a local planning authorities ability to generate and retain the fee-income associated with planning applications of all types. The double-whammy is that if the 26 weeks long-stop date is not met the local planning authority will still be required to discharge it's statutory planning functions as they relate to the appeal process. This would equate to a resource cost with no inward income with which to continue to meet such costs.
- 3.15 The principles embodied in the Planning Guarantee were set out a DCLG Consultation entitled 'Planning Performance and the Planning Guarantee' which ran for 8 weeks from 22 November 2012 to 17 January 2013. The anticipated timescale for introducing the Planning Guarantee is currently unconfirmed. The Planning Advisory Service has set out that the anticipated timescales are presently:
- 17 January 2013: Consultation ended.
 - April 2013: DCLG Response to Consultation (including confirming criteria and thresholds for designating 'poorly performing' authorities).
 - July 2013: Publication of Performance Data for 2012-13 (as well as 2011-12) indicating which authorities are at risk of designation.
 - August-September 2013: Opportunity to correct any data errors and account for applications subject to environmental impact assessment.
 - October 2013: Introduction of secondary legislation; initial designations made.
 - The 'fee refund proposals' could take longer to implement due to nature of secondary legislation required.
- 3.16 Whilst the introduction and implementation of the 'fee-refund proposals' is as yet unconfirmed, it nevertheless needs to be anticipated. There is the very real potential that the proposals could be in place by the end of this calendar year; and certainly before the commencement of the next financial year.
- 3.17 Breckland Council therefore needs to be in a position to respond to and effectively manage the implications of the proposed Planning Guarantee. Two principal matters are of genuine concern:
- 3.18 **The Designation of Poorly-Performing Authorities**
- 3.19 The consultation referred to above has suggested that a number of indicators are likely to be used to assess LPA performance. It is likely that these indicators will centre on:
- 3.20 Timeliness - defined as the average number of 'Major applications decided within 13 weeks as a percentage of all major decisions, assessed over a two-year period; and
- 3.21 Appeal Success - the proportion of major decisions overturned, defined as the number of appeals involving major development that are lost, as a percentage of all major decisions made (and again assessed over a two-year period).
- 3.22 The precise benchmarks for designating authorities as 'poor performing' are subject to

consultation and review, pending legislative change. It is however worth noting that for illustrative purposes the consultation document used assumptions of authorities whose timeliness measure is less than 30 per cent, or whose proportion of major decisions overturned is greater than 20 per cent.

3.23 Breckland Council's statistics for 2011-12 were published by the DCLG in the September 2012 Planning Guarantee Monitoring Report. They are as follows:

Local Authority	Total number of planning decisions	No. of all planning decisions determined within 26 weeks	% of all planning decisions determined within 26 weeks	No. of major planning decisions determined within 26 weeks	% of major planning decisions determined within 26 weeks
Breckland	1322	1296	98%	48	75%

3.24 By way of comparison, South Holland's returns reveal 98% of all applications determined with 26 weeks and 88% of all 'Majors' determined within 26 weeks. The summary position is that of the 315 LPA's who responded in every quarter of 2011-12:

- Three authorities (1%) determined all of their planning applications within 26 weeks, rising to 19 authorities determining more than 99.5 per cent of applications in this time. Some 278 (88%) planning authorities decided more than 95 per cent of cases within 26 weeks.
- For major applications, 12 authorities (4%) decided 100% of major applications within 26 weeks, while 20 (6%) decided more than 95% of majors within 26 weeks.

1.19 The over-riding conclusion is that whilst Breckland's overall performance is in a good place, the proportion of 'Major' applications determined with 26 weeks is, in a national context, only slightly above the overall 'average' of around 73%. Some LPA's determine as few as 30% of 'Majors' within 26 weeks. A number achieve 100%. The statistics themselves are easily distorted on the basis that some LPA's determine relatively few 'Majors' in any one financial year. However, Breckland, in determining 48 "Majors" in 2011-12, needs to be seen as receiving a relatively high proportion of this type of application (for a rural authority) when considered against the national background.

3.25 In the context of appeal success rates, another of the indicators that DCLG will use when determining 'poorly performing authorities, Breckland's 2011-12 returns reveal that 10 appeals were allowed and 1 split-decision (39%) and 35 dismissed (69%) in 2011-12. By way of comparison, South Holland's respective figures were 2 allowed (14%) and 14 dismissed (86%). The national average equates to 34% allowed and correspondingly 66% dismissed, although this does differ markedly depending upon the type of appeal and procedure followed.

3.26 Again, Breckland remains well placed in a national context in the context of overall appeal performance. However, the indicator suggested by DCLG is only concerned with appeal performance in the context of those appeals concerning 'Major' applications. These figures are not presently routinely monitored or published. As a proportion of overall appeals they represent less than 20% of all appeals received nationally. The bottom line is that, if we assumed 20% Breckland's appeals related to major applications this could, in a proportional sense, have equated to 9 appeals in 2011-12. It is not difficult to get to a

position where 20% of 9 appeals are over-turned at appeal given the relatively low numbers involved. Breckland, in common with all other LPA's, will need to not only deal with 'Major' applications expeditiously; it will also need to ensure that its decisions are routinely robust and based on sound planning judgements.

3.27 In short, your officer's view is that Breckland is highly unlikely to fall into the category of a 'poorly performing' local planning authority when assessed against the criteria relating to timeliness when determining 'Major' applications. There does, however, remain the clear risk of poor appeal performance in successfully defending appeals relating to 'Major' applications given the relatively low numbers of appeals involved.

3.28 **The Implications of the Planning Guarantee**

3.29 The Planning Guarantee, when introduced, will require LPA's to refund the whole of any received planning fee (for all types of application) if a decision is not made by the planning authority within 26 weeks of validation. In 2011-12, Breckland determined 98% of all valid applications within 26 weeks.

3.30 If we simply focus on the total quantum of all applications received and determined, the fee income received by Breckland as LPA in 2011-12 was £1,011,938. On the basis that 2% of all applications were determined outside of the 26 weeks time limit, Breckland Council would have had to return £20,239 to those individual applicants in 2011-12.

3.31 However, if we analyse fee income into the respective fee categories, some 48 of the applications determined in 2011-12 fell into the 'Major' applications category. A 'Major' application is defined, for planning purposes, as an application for:

- 10+ dwellings / .5Ha and over
- Office/light industrial - 1000+ sq m/ 1+ Hectare
- General Industrial - 1000+ sq m/ 1+ Hectare
- Retail - 1000+ sq m/ 1+ Hectare
- Gypsy/traveller site 10+ pitches

3.32 The fee income associated with 'Major' applications determined by Breckland in 2011-12 accorded to £639,292 out of a total fee income of some £1,011,938. Put bluntly, the fee income associated with 'Major' applications represented over 60% of the total planning application fee income received by the Council in 2011-12. This is perhaps unsurprising, as planning fees are generally related to the extent of new floorspace created or the magnitude of the overall site area.

3.33 What is of concern, however, is that 75% of all 'Major' applications were determined by Breckland in less than 26 weeks in 2011-12. These 'Major' applications resulted in fee income amounting to some £639,292 (if we assume they were received and determined within the same financial year). A simple analysis would reveal that, had the presently promoted Planning Guarantee been in place, the Council would have been required to return some 25% of these monies to the applicants. This would have equated to some £159,823. This is a not insignificant sum in the context of overall fee income, and markedly outstrips the 2% referred to in relation to the overall figures referred to above. In essence, it equates to nearly 16% of all planning application fee-income received by the Council as LPA.

3.34 Your officer's view is that the Council needs to put into place processes that mesh with the governments pro-growth and timeliness agenda's. This equates to the need to obviate against taking overly-long to determine 'Major' applications and to therefore be required to

return the fee-income associated with large-scale or 'Major' development proposals. The failure to do so has obvious consequences relating to the Council's overall desire to promote appropriate growth, retain and promote inward-investment, reap the benefits of associated business rates and the new homes bonus, and maintain the Council's ability to properly resource its planning service, including in relation to its ability to defend its decisions at appeal and to minimise the risk of successful legal challenge. No small challenge but a critical aim in the context of the Council's overall growth ambitions and an obvious remit given the current economic climate.

3.35 **The Council's current Delegated Arrangements**

3.36 The Council's current delegated arrangements relating to the determination of planning applications give delegated authority to the Director, Assistant Director, Head of Service and his Deputy to:

Issue all decisions for Planning Applications (as defined below) except those applications which are of a major or significant nature (as defined below) where the Director considers that, on balance, and after taking into account all material considerations including Human Rights Acts issues, the decision would be in compliance overall with the policies contained in the Local Plan, the Structure Plan and Government guidance.

The above power is subject to the following:

- 1A A weekly list being sent to all Members containing details of Planning Applications received.
- 1B 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:
 - (i) A written notice must be received from the Ward Member by the Director within 23 days of the publication of that application on the weekly list requesting the referral of the application to the Committee.
 - (ii) The request only to have effect if it contains proper planning reasons for consideration by Committee.
 - (iii) The Chairman of Planning Committee must agree that the proposed referral to the Committee is appropriate.
- 1C. "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); 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
- 1D "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

1E “Significant Applications” will include those which

§ officers may wish to approve which are contrary to policy

§ those which, in the opinion of the Director and Chairman of Planning Committee, are of particular sensitivity locally

§ applications submitted by the District Council

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

1F. 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.

2. Power for the Director to make decisions as necessary for the processing of applications, including any decision required under the Habitats Regulations and Environmental Impact Assessment Regulations.

3.37 These delegated arrangements have served the Council well over time and have, in the main, achieved a delegation rate that is entirely reflective of the aims and thrust of the Killian and Pretty Review (2008). This review recommended Council’s to adopt a range of measures aimed at improving the engagement of elected members whilst at the same time encouraging delegation rates of at least 90% in every Council. In particular, the Killian Pretty review concluded that the balance between delegation and the need for applications to be determined at Planning Committee should, if properly managed, enable Members to focus their resources on the more significant developments.

3.38 Your officer’s view, in light of emerging changes to the legislative regime, is that the current delegation arrangements need tailoring to ensure that:

- a) Planning Committee continues to consider and determine the most significant and contentious schemes; and that
- b) The Council reacts positively to the growth agenda and the need for timeliness by facilitating speedier decision-making.

3.39 In light of all the above, and in order to introduce processes which better facilitate the delivery of the growth agenda, your officer is of the clear view that:

1. There is no need for all ‘Majors’ to be determined at Planning Committee;
2. There is no need for the majority of staff applications to be determined at Planning Committee; and

3. There is a clear need to establish an evidential Member Call-In protocol;

3.40 These tripartite aims have implications for the current delegated arrangements. It is therefore suggested that the current delegated arrangements are amended. The rationale behind seeking these amendments is as follows:

3.41 Determination of 'Majors' at Planning Committee

3.42 The current delegated arrangements require all 'Major' applications to be determined at Planning Committee. The definition of 'Majors' reflects the government's definition of 'Majors' set out at paragraph 1.25 above. This definition reflects either the extent of the application site, the footprint of the proposed building(s), or the number of residential units proposed.

3.43 As a starter for ten, the expectation that 'Major' applications will also be those that require engagement with the local community or have strategic implications is not a bad definition. However, with all definitions come anomalies. Currently, if an outline application for residential development relates to a site of a certain size it automatically needs to be determined at Planning Committee. Where such proposals are contentious, this is the proper route. Where such applications relate to land previously allocated in the Local Plan for residential use and no significant objections are received the requirement for such proposals to go before Planning Committee causes delay. This inhibits a growth agenda and increases the risk of fees being returned to the applicant once the Planning Guarantee becomes legislatively enshrined. The same applies to applications for substantial buildings for use for industrial purposes on allocated industrial land and for agricultural or horticultural buildings on agricultural land – poultry units or ranges of poly tunnels. Often these proposals are uncontentious and raise no significant local concern. It could additionally be argued that the need for putting these applications forward to Planning Committee lengthens the process unnecessarily and creates uncertainty within the commercial and agricultural sectors. It could also act as a disincentive to applications coming forward within Breckland if potential employment uses are put off by the associated risks of procedural delay and/or uncertainty. A further anomaly the current delegated arrangements causes is the subsequent need for 'reserved matters' applications to be determined at Planning Committee. This is a practical nonsense in circumstances where the principle of development has been established, often at Planning Committee, at 'outline' stage and no significant objections have been received at the detailed or 'reserved matters' stage.

3.44 Your officer's clear advice is that the current delegated arrangements are revised as set out at Appendix One (revisions highlighted in red).

3.45 Determination of 'staff' applications at Planning Committee

3.46 There is ever a need for transparency of process in the planning system. This is paramount to its integrity and it is recognised that all applications made by the Council for development on its own land should quite properly be determined in the public arena that is Planning Committee.

3.47 The current delegated arrangements also require all applications made by an elected Member or member of staff to be determined at Planning Committee. It is considered quite proper for all applications submitted by elected Members to be determined at Planning Committee as this evidences transparency of process and obviates against the perception, real or otherwise, that business is done behind closed doors. It is questionable whether or not applications submitted by Members acting as agents on the behalf of others ought to be determined at Planning Committee but again, given the need

for transparency of process, this is probably quite proper.

3.48 However, it is entirely questionable why all applications made by members of staff ought to be determined at Planning Committee. If the particular member of staff is employed at Head of Service level or above it is considered that their applications ought quite properly to be determined at Planning Committee. Further, if the member of staff is employed by the Planning Department then, again, these applications ought to be determined by Planning Committee. The disparity occurs where the member of staff is employed at a lower grade or outside of the planning department. There is not considered to be such a clear or readily discernible need, in such circumstances, for applications submitted by members of staff to be determined at Planning Committee. Your officer's view is that, in these circumstances, these members of staff cannot be considered to have, or to be seen to have, undue influence over the democratic process. Furthermore, the current arrangements would additionally result in applications submitted by relatively junior members of staff going before Planning Committee. This process, of itself, gives rise to the right to public speaking. This is not a right that is universally extended to members of the public submitting potentially similarly uncontentious applications. There is currently a risk that the Council could, in the arena that is Planning Committee, be accused of giving preferential treatment to its own staff should the officer recommendation be overturned. The implementation of the Planning Guarantee also has the potential consequence of requiring the Council to refund planning fees to staff members where unacceptable delay occurs. This is not a prospect to be welcomed but, as always, the balance is a delicate one. Nevertheless, your officer's view is that the delegated arrangements ought to be revised as set out at Appendix One (revisions highlighted in red).

3.49 **Member 'Call-In' Protocols:**

3.50 The current delegated arrangements facilitate a route whereby Ward Members, in conjunction with the Chairman (or Vice Chairman in his absence), can require an application to be referred to and determined by the Planning Committee. This right is presently only exercisable if;

4. Written notice is received by the Director within 23 days of the publication of the weekly list;
5. The request for referral sets out proper planning reasons why the application ought to be considered by Planning Committee; and
6. The Chairman (or Vice Chairman in his absence) agrees the request is appropriate.

3.51 These arrangements have proven themselves to be workable but are open to loose interpretation. They ought to be better framed.

3.52 In relation to the requirement for a written request to be received by the Director this is not routinely adhered to and there is no recorded audit trail that evidences such requests. There ought to be.

3.53 In relation to the requirement to set out proper planning reasons for the Ward Member requiring the application to be referred to and determined at Planning Committee there is similarly no audit trail. This would ensure the reasons for referral were spelled out. Again, there ought to be an evidential audit trail.

3.54 Presently the agreement of the Chairman is verbal. Again, and as a consequence of the lack of an audit trail relating to 1 and 2, the Council ought to maintain an evidential audit

trail.

- 3.55 Your officer's view is that, whilst the present delegated arrangements for Member 'Call-In' are appropriate, the delegated arrangements ought to be revised and complemented with a protocol that secures compliance with the requirements of the delegated arrangements themselves. This protocol needs to mesh with the present delegated arrangements. It needs to be flexible enough to extend to relevant officers of the service (both within the client and Capita teams) and ought properly to record Ward Member requests for referral. Ward Member requests need to be recorded in either paper or electronic form. Furthermore, whilst the current 23 days period from publication of the public list is considered adequate, there will be circumstances where proper public planning concerns are not brought to the Ward Members attention within this timescale. There needs to be discretion to vary this 23 day period in extenuating circumstances but, again, the reasons needs to be credible, identifiable and recorded; ever mindful of the potential consequences of the impending introduction of the Planning Guarantee.
- 3.56 A suggested Ward Member Call-In Request form is attached at Appendix Two. Your officer's advice is that this ought to be adopted as standard procedure by the Council forthwith. Members' views are therefore sought on both the principle of the suggested amendments to the Delegation Agreement as they relate to the Call-In procedures and the layout, practicality and content of the appended Ward Member Call-In request form.

4. OPTIONS

4.1 Do Nothing

4.2 To continue with the present delegated arrangements would fail to address timeliness in the context of determining applications and, in the context of uncontentious 'Major' applications, would increase the risk of the Council as LPA paying back a substantial element of it's present fee income. It would also increase the risk of the Council failing to react positively to the growth agenda and could act as a clear disincentive for developers to do business with the Council. There is the attendant risk that doing nothing increase the risk of the Council being less able to successfully defend appeals relating to 'Major' applications when non-determination appeals were submitted. Added risks centre on unwarranted delays to the determination of routine staff applications. In relation to the current Ward Member Call-In procedures, the risk of not setting out a clear route and clear audit trail of the process is that unacceptable delay occurs to uncontentious schemes that do not warrant determination by Planning Committee. There is also a present risk in that transparency of process is not evidential.

4.3 Accept the Recommendation, with or without amendment

4.4 For all the reasons set out in the report, the above recommendation is considered the most appropriate response to the implications of the introduction of the Planning Guarantee and the need for timeliness in decision-making.

3. REASONS FOR RECOMMENDATION

3.1 To better respond to the government's growth agenda; to address the need for timeliness in all decision-making process; to better prepare the Council to play a vital part in supporting growth by promoting and enabling the homes, jobs and facilities that communities need; to minimise uncertainty and delay for those proposing or those affected by development; and to reduce the risk of a significant loss in fee-income which would fetter the Council's continued ability to effectively resource its planning service.

4. EXPECTED BENEFITS

- 4.1 Better enabling the Council to respond positively to the growth agenda; delivering greater certainty to the development industry and ensuring clarity for the District's residents; speedier decision-making processes; the setting out of clear reasons for only the most significant, contentious, locally sensitive or novel applications being determined by Members at Planning Committee; a reduction in the risk of the loss of significant income; and a consequential increase in the likelihood of the Council being able to continue to properly resource its planning functions in future.

6.0 IMPLICATIONS

- a. **Legal:** The proposed recommendations minimise the legislative risks associated with doing nothing.
 - b. **Risks:** The proposed recommendations minimise the legal, financial and process risks associated with doing nothing.
 - c. **Financial:** The proposed recommendations react to the need to ensure financial probity and better place the Council to continue to deliver its statutory planning functions.
 - d. **Timescales:** Effective immediately, following endorsement by Full Council.
 - e. **Equality and Diversity:** No implications.
 - f. **Stakeholders / Consultation:** This report is in the public domain and reacts positively to the government's growth agenda. The anticipated changes to the legislative regime will require the Council to implement its content. There will be no requirement to formally engage or consult with stakeholders as the legislative aim is to facilitate transparency of process and to introduce timeliness and greater certainty.
 - g. **Contracts:** The Council's planning services are delivered under contract by Capita Symonds. It will be incumbent upon both the Council and its contractors to meet with the requirements of legislative change through the formal process that is Contract Monitoring Board.
 - h. **Section 17, Crime & Disorder Act 1998:** No implications.
6. **WARDS/COMMUNITIES AFFECTED:** All wards.

Background papers:-

Her Majesty's Treasury's Department for Business and Innovation Skills' Plan for Growth 2011 is available electronically at: http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf

Her Majesty's Treasury's Department for Business and Innovation Skills' Plan for Growth: Implementation Update (March 2012) is available electronically at: http://cdn.hm-treasury.gov.uk/growth_implementation_update.pdf

The Department for Communities and Local Government's Planning Guarantee Monitoring Report 2011-12 is available electronically at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7546/2226054.pdf

The Department for Communities and Local Government's consultation on Planning Performance and the Planning Guarantee is available electronically at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14961/Planning_performance_and_the_planning_guarantee_-_Consultation.pdf

The Planning Inspectorates Statistical Report England 2011-12 is available electronically at:
http://www.planningportal.gov.uk/uploads/pins/statistics_eng/stats_report_final_2011_2012.pdf

The Final Report of the Killian Pretty Review, Planning Applications: A Faster and More Responsive System (November 2008) is available electronically at:
http://www.planningportal.gov.uk/uploads/kpr/kpr_final-report.pdf

Lead Contact Officer

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Director/Officer who will be attending the Meeting:
Paul Jackson

Key Decision – Yes

Appendices attached to this report:

Appendix One – Proposed revised Delegated Arrangements

Appendix Two – Ward Member Call-In Request Form

APPENDIX THREE

Extract from Minutes to Planning Committee held on 11 March 2013

DELEGATED ARRANGEMENTS AND THE PLANNING GUARANTEE (AGENDA ITEM 14)

The Planning Manager presented the report and explained that changes in Government legislation made it likely that in future Local Authorities would have to determine applications within six months (including completing legal agreements) or face paying back the fee. If the application then went to appeal the authority might also have to pay additional costs because of the delay. Looking at the previous year's figures, the Council would have had to pay back about £190,000 in fees which equated to over 16% of all income from planning applications.

In cases where it was clear that negotiations were going to be lengthy the Council and applicant would need to agree a bespoke timetable. As long as a formal agreement could be reached, the figures for those applications would be taken out of the statistical returns.

These changes were being brought in by the Government to support their Growth Agenda. However, they might prove to be counter-intuitive if they caused applications to be refused due to lack of information. The Council needed to put a process in place to ensure that applications could be dealt with quickly. The Planning Committee should only deal with contentious and major applications.

Not all Major applications were contentious and it was proposed that those that were not and that did not have significant strategic implications should not need to be determined by the Committee.

Currently all applications by Members or staff also came to Committee. In future it was proposed that all Member applications should continue to do so for transparency. However, applications by members of staff that had no direct interaction with the Planning Officers should not. There would be a need to manage public perception and any applications by Senior Managers would still automatically be referred to Committee. It was noted that by bringing every member of staff application to the Committee it actually gave an opportunity for the staff member to address the Committee on applications recommended for refusal, giving them a perceived 'advantage' over other members of the public who did not get that opportunity.

With regard to Member Call-Ins, the Planning Manager said it was important to record the reason why an application was called in to Committee and also to record why that request was accepted or declined. The proposed forms, if adopted, would be kept as an audit trail. In conclusion he advised Members that over the past 12 months, if the new scheme had been in use, only about a dozen applications would not have come to Committee. All of those had been approved unanimously, usually without any discussion at all. They tended to have been applications for large agricultural buildings such as onion stores or poultry units, which had come to the Committee due to their size.

He sought Members' views on the proposals.

Councillor North thought it was a very good document and that the Member Call-In Form was the right thing to have to provide transparency.

Councillor Carter asked if the work of the Committee would be reduced and was advised that it should give them more time to deal with the more contentious applications, of which there had been 48 during the past year.

Councillor Lamb asked if a contentious application was one with objections and was advised that that was not the case. Currently applications recommended for approval, contrary to Policy were

referred to Committee and also those that were significant or locally contentious. It was key to note that what might be significant in a small village, with only two or three objections, would not be the same in a town centre, where more objections would be required.

Councillor Lamb asked how Public Inquiries fitted into the new timescales and the Planning Manager advised that appeals would also only have six months to be determined and would therefore reach the Inquiry stage more quickly.

It was clarified that the Call-In form would only be used by Members requesting an application be heard at Committee and that there would be no requirement for a counter-signature. Councillor Carter asked whether the change was just an attempt to reach targets and the Planning Manager acknowledged that targets still needed to be met but said that it was more about performance and how major applications were dealt with and the number that were overturned at appeal. Of the 48 major applications that were dealt with on average per year, very few went to appeal, but if only a couple of those were overturned it affected the Council's performance figures.

Councillor Bambridge was concerned that it was a move towards reducing democracy which he would not want to see go any further and which he requested should be under constant review. He also noted that sometimes a Ward Member might want an application to come to Committee but there might not be strict planning reasons for that request. He suggested that it might speed the process up if the Council offered more pre-application consultation, which could be charged for at a reasonable rate.

The Chairman acknowledged that some applications were finely balanced and he clarified that he had not said that 'strict' planning reasons were needed to support a request, but there did need to be planning reasons.

The Planning Manager agreed and said that with contentious issues, transparency might be a good enough reason, but he warned against raising unrealistic expectations if there were no good planning reasons.

He drew attention to paragraph 1.12 of the report and explained that it was not yet clear whether the six months given to determine an application before having to pay back the fee included the period until any legal agreement was signed. Sometimes that was delayed by the applicant and in those cases the Council would need to enter into a Planning Performance Agreement or a Post-Application Agreement to take those applications out of the statistics and avoid having to repay the fee.

Councillor Carter was not keen to charge householders for pre-application advice, although he could support charging developers for the more technical advice they might require.

Councillor North asked how much officer time would be saved by not bringing some applications to Committee and was advised that as it would equate to only about one less application per meeting it was not that much time, however there were occasions when an additional site visit might have been required to take specific photographs and that could be time consuming and resource hungry. Overall it could equate to about half a day of officer time saved.

RESOLVED to RECOMMEND TO COUNCIL that:

- (1) the amendments to the Council's Delegated Arrangements, as set out in Appendix One of the report, be approved; and**
- (2) the Ward Member Call-In protocols contained in the revised Delegation Arrangements and the use of the Ward Member Call-In Request Form (set out in Appendix Two of the report) be approved.**

The meeting closed at 2.15 pm

APPENDIX FOUR

Extract from Minutes to Council held on 11 April 2013

Delegated Arrangements and the Planning Guarantee (Minute No 30/13)

Mr Jordan did not agree with the recommendation. He asked why the current system had to change when it worked well.

The Planning Manager explained that changes to legislation expected in 2013 would require planning fees to be repaid if a decision was not reached within 26 weeks. Under the current delegation arrangements all major planning applications were required to be determined by Committee. The term 'major' was defined by the Government and referred to applications for housing schemes above a certain number of dwellings and applications over a certain floorspace or site area. Over the previous two years a number of major applications had gone before the Committee and been approved with little or no debate because they had not been contentious and had received no objections.

The report suggested that those applications should not need to come to the Committee. However, any major application which received objections or raised concerns should continue to be determined by the Committee.

The Planning Manager noted that major applications attracted the largest fees (equating to one third of all fees received from planning applications) and if they were delayed there was an increasing risk that the Council might be required to pay back those fees in future.

Mr Jordan explained that Councillors were elected to represent their Wards and Parish Councils and residents sought their support to call in applications, for proper planning reasons. That system worked and he didn't understand why a change was needed.

The Planning Manager advised that the aim was to provide a clear audit trail for call-ins. It wasn't proposed to change the delegation in that regard and all applications that had been called in over the last two years would still be referred to Committee in future.

Mr Jordan said that the system already provided a record as people generally e-mailed their requests for call-in.

The Executive Member for Planning & Environmental Services noted that when she had been Chairman of the Planning Committee seven out of ten requests for call-in had not been given any reason for it. Having a form would prompt people to provide that reason at the start of the process.

Mr Bambridge referred Members to the comments he had made at the meeting when the issue was discussed (page 26 of the report). He was concerned that too many applications were dealt with under delegated powers. He did not have any problem with filling in a form to request an application to be called in, but had asked that any change was kept under review.

Mr Duffield understood the concerns expressed and thought that the problem might be that there were not enough Planning Officers to get applications through in time.

The Executive Member for Planning & Environmental Services pointed out that the Planning Service was provided by Capita under contract and that the Council had no control over the number of staff they employed.

Mrs North noted that at the meeting she had been advised that the changes would result in about one less major application per Committee and would save about half a day of Officer's time.

Mr Cowen had concerns and said that other issues needed to be incorporated including changes to legislation. He had no problem with the Councillor call-in form and accepted the reasons behind it. But he was concerned about major applications and asked if Officers were doing their jobs properly if they could not meet the requirements to determine the applications within a standard timeframe. With regard to saving Officer time he suggested that the work still had to be done to reach a balanced and proper decision.

Mr Smith agreed. He also thought that it was not always for planning reasons that applications needed to be called in. Social and economic reasons sometimes applied. He thought that it was not necessarily the number of Officers that was an issue, but the way that they worked.

Mr Sherwood thought that the proposals regarding the Member call-in just seemed to be a formalisation of the existing system and as long as Members were assured that they could continue to call applications in he thought there was nothing wrong with the form and it might be useful for inexperienced Members as a guide.

Mr Jordan proposed that the matter be deferred for further work and the Leader of the Council agreed and thought that Members needed to attend the Planning Committee to take part in the debate. They all knew that planning reasons were required for call-in but they had been elected to represent their communities and it was important that people had the opportunity to have their say.

Mr Kybird suggested that part of the referral should include addressing the risk of applications not being dealt with within the 26 weeks and that any further work should include a risk analysis of that.

RESOLVED that the report be referred back to the Planning Committee for further work and future reference to the Council.