



**REPORT of
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

**to
COUNCIL
28 JUNE 2018**

**COMMITTEE TERMS OF REFERENCE AND SCHEME OF DELEGATION
UPDATE**

1. PURPOSE OF THE REPORT

- 1.1 To consider the approval of a change in relation to the Scheme of Delegation in relation to the ability for elected members to call an application in to the Area Planning Committees.

2. RECOMMENDATION

That Members of Council decide to either:

- (i) Agree changes to the Terms of Reference of the Area Planning Committees in relation to the ability for elected members to call an application in to the Area Planning Committees, as presented in paragraph 3.3.3 of this report.

Or

- (ii) Make no amendments to the existing Terms of Reference of the Area Planning Committees in relation to the ability for elected members to call an application in to the Area Planning Committees.

3. SUMMARY OF KEY ISSUES

3.1 Background

- 3.1.1 A recent planning application has highlighted a potential issue regarding the opportunity for Members to call an application in to Area Planning Committee, when there is an amendment to the original planning application.
- 3.1.2 Recently an application was received by the Local Planning Authority (LPA) for the demolition of a house and the erection of a new dwelling. Whilst a neighbour did object to the proposal there were no objections from statutory consultees and no response from the parish council.
- 3.1.3 Notwithstanding the above, a number of concerns were raised with the design by the LPA and after discussions with the applicant amended plans were submitted in an attempt to overcome the issues raised. Due to the nature of the changes a re-

consultation process was undertaken. An additional letter of objection was received from the original objector. The amendments did not result in any objections from statutory consultees but this time the parish did reply, stating that they recommended the granting of planning permission.

- 3.1.4 At the time of the re-consultation process an elected member attempted to exercise their right to call the application in to the appropriate Area Planning Committee. However, the current Scheme of Delegation provides a period of 28 days for an application to be called in from the date it appears on the weekly list. There is no allowance for any extension of this period, if and when an application is amended to such a degree as to warrant re-consultation. It has therefore, been requested that the matter is brought to the attention of the Council, to consider the need to amend the Terms of Reference of the Area Planning Committees to allow for members to ‘call in’ an amended scheme whilst the new consultation period is ‘live’.

3.2 **Amendments and variations to Planning Applications**

- 3.2.1 Whilst it is common practice for a LPA to accept amendments to planning applications during the determination process there is no statutory power to do this, but the practice is well established and case law has confirmed that it is acceptable.
- 3.2.2 The Courts have accepted that there is not always a need to consult interested parties on amendments. It is necessary to consider if the alterations result in a form of development that is “*different in substance to what was applied for*”. If the alterations result in a proposal that is in the same substance as to what was applied for there is no need to re-consult on the amendments.
- 3.2.3 When amendments are accepted that result in a scheme that is “*different in substance to what was applied for*” there is a need to undertake appropriate consultation. The level of consultation required is respondent to the nature of the amendments. Maldon District Council, in most instances, will provide a 14 day period for comment on amended proposals.

3.3 **Area Planning Committee Terms of Reference**

- 3.3.1 The current terms of reference states that:

“Where a Ward Member requests that an application in his/her Ward is referred to the Area Committee for determination in accordance with ANNEXE A.”

- 3.3.2 Annexe A provides a number of criteria that are required to be met before an application can be ‘called in’ to go before the appropriate Area Planning Committee (Please see **APPENDIX 1** for the current Annexe A). The one relevant to this report is point (iii) which requires that requests for an application must be made in writing to the dedicated email address and within 28 days of the date an application appears on a published Weekly List produced by Planning Services. As stated above there is no provision for amended plans or new documentation to trigger a second ‘call in’ period.
- 3.3.3 For this reason, it has been requested that Council consider the need to amend point (iii) of Annexe A within the current Terms of Reference to state:

“Requests must be made in writing to the dedicated email address – and within 28 days of the date an application appears on a published Weekly List produced by Planning Services. When an application is amended, and the parish or town council is re-consulted, requests can be made in writing to the dedicated email address provided it is within the consultation period provided to the parish or town council.”

3.4 Impact of proposed changes

- 3.4.1 Once a planning application has been validated, the local planning authority should make a decision on the proposal as quickly as possible, and in any event within the statutory time limit. Poor performance at determining planning applications within the statutory time frame can result in a LPA being placed in ‘special measures’. It should also be noted that an applicant can appeal on ‘non-determination’ once the statutory deadline has expired.
- 3.4.2 The suggested changes to the scheme of delegation would, when significant amendments are proposed, allow for an application to be ‘called in’ much later in the determination process than currently is the case. This is likely to result in every application that is before the Area Planning Committee due to the new arrangement being determined after the expiry of the statutory deadline. This is likely to have an impact on the statistical performance of the LPA as well as increasing the workload through the need to produce a committee report and also, potentially, defending appeals on non-determination.
- 3.4.3 There are currently times that case officers will seek amendments to schemes to improve the quality of the development even when the shortfalls in the application do not warrant a reason for refusal. This would include, but not exclusively, seeking to improve the proposal through enhancement to the quality of the design, impact on the character of the area, amenity provision, impact on neighbours and also car parking provision.
- 3.4.4 Concerns are also raised that the second opportunity for members to call an application in to committee may result in applicants and agents not being willing to undertake such amendments and therefore, reduce the opportunity for the LPA to improve the quality of the proposal to the betterment of the built form of the district as a whole.
- 3.4.5 It should also be noted that the provision of a second opportunity for an application to be ‘called in’ is likely to result in an increase in applications being presented to the Area Committee at a time when the Council is actively seeking to reduce the level of work placed before committees.

4. IMPACT ON CORPORATE GOALS

- 4.1 The review and updating of the corporate governance arrangements of the Council underpins the decision making processes of the Council, is in part a matter of compliance with the law and is also linked to high level outcomes associated with the corporate goal of delivering good quality, cost effective and valued services in a transparent way.

5. IMPLICATIONS

- (i) **Impact on Customers** - The ability to ensure that planning decisions are taken in a timely, open and transparent way.
- (ii) **Impact on Equalities** – None identified.
- (iii) **Impact on Risk** – Failure to determine planning applications within the statutory timescales could result in the Council being placed in ‘special measures’ and also an increase in planning appeals with a subsequent impact of staff resources.
- (iv) **Impact on Resources (financial)** – None identified.
- (v) **Impact on Resources (human)** – None identified.
- (vi) **Impact on the Environment** – Reduction in amendments to proposals could lead to adverse impacts on the environment resulting in long term harm which might be difficult to mitigate.

Background Papers: None.

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