

Report to	-	Cabinet
Date	-	6 November 2017
Report of the	-	Executive Director of Business Operations
Subject	-	Strategy and Planning Delegations

Recommendation to COUNCIL: That the functions listed in Appendix A be incorporated into the appropriate sections of Council's Constitution and the Scheme of Officer Delegations be amended accordingly, subject to the concurrence of the Planning Committee, where appropriate.

Service Manager: Tim Hickling
Lead Cabinet Member: Councillor G.P. Johnson

Introduction

1. The purpose of this report is to seek Cabinet endorsement of proposed changes to the Council's Scheme of Delegation, primarily in relation to planning policy matters which fall under the remit of executive decision making and which are regarded as necessary to maintain proper and efficient service operations.
2. For ease of reporting and clarity, this report will also be submitted to the Planning Committee meeting on 16 November to enable the Planning Committee to endorse and approve the delegations that flow from the Planning Committee.
3. The proposed changes are mainly a consequence of new legislation, firstly in relation to neighbourhood planning procedures and, secondly, in response to the duty imposed on councils to prepare and maintain a 'Brownfield Land Register' for their area and, following that, to consider whether a new 'permission in principle' and a related 'technical details consent' should be granted for sites.
4. The only reference in the current [Constitution Part 8: Delegation to Officers](#) to 'planning policy' is the delegation to the Service Manager – Strategy and Planning (at 3.1.30):

'To make representations on draft planning and related policy statements and documents upon which the Council is consulted in terms of their alignment with Council policies and strategies in consultation with the Chairman of Planning Committee, where appropriate. (C)'
5. Delegations for other planning policy functions have also been reviewed as part of the 'lean working programme'. Most are found to be suitably covered by existing arrangements, although in addition to the above, this is an opportunity to incorporate managing a small conservation grants fund into the Scheme of Delegation.

6. Each topic area is discussed in parts A – C below, namely:
- A. Neighbourhood planning
 - B. Brownfield Land Register, Permission in Principle and Technical Details Consent
 - C. Conservation Fund grant requests

A. Neighbourhood planning

7. The [Neighbourhood Planning \(General\) Regulations 2012](#) were amended by the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016 and came into force on 1 October 2016. Together with the Neighbourhood Planning (Referendums) Amendment Regulations 2016, these Regulations now prescribe periods within which a local planning authority (LPA) must:
- a) designate a Neighbourhood Area, being immediately they consider the application to be valid and complete if it is for a single whole Parish, within 8 weeks otherwise, or 13 weeks if proposed by a Neighbourhood Forum;
 - b) make a decision on an Examiner's Recommendations, being within 5 weeks of receiving the examiner's report (subject to exceptions where it proposes to make a decision which differs from that of the Examiner¹ or where additional time has been agreed with the Qualifying Body);
 - c) hold a referendum within 56 working days of the decision that the plan be "made" (adopted); and
 - d) determine whether to 'make' a neighbourhood plan, being no later than 8 weeks following the referendum.
8. It is clear that these timescales are not achievable if neighbourhood plans need to go to Cabinet and Council at each stage.
9. Research has found that authorities dealing with a number of neighbourhood plans often have considerable delegation, covering most if not all decision-making stages. However, such extensive delegation is not considered appropriate, given that such plans will have the same status as the Council's own local plans and, in officers' view, should be subject to Elected Members' oversight.
10. To put the situation in context, there are currently 10 Neighbourhood Plans in preparation, having all been designated as 'Neighbourhood Areas'. Two Neighbourhood Plans are currently at examination, all the others have yet to reach the draft plan stage at the time of writing. Hence, the new regulations are expected to have real logistical implications over the next year or two.
11. To date, draft ('pre-submission') Neighbourhood Plans have been the subject of informal "officer comments", while formal, 'submission' Neighbourhood Plans have been reported for Cabinet consideration and treated as an 'urgent item' to enable for formal representations to be submitted in time. Upon

¹ Where the LPA's proposed decision differs from that of an Examiner additional consultation must be undertaken on this for a period of six weeks with the final decision being issued within five weeks of the end of said consultation period.

receipt of the examiner's report, this has previously been reported to Cabinet and Council for decision. There has been no referendum yet.

12. It is proposed to essentially formalise current practice in terms of giving officers delegated authority to advise and comment on Neighbourhood Plans up to the pre-submission stage, including providing SEA Screening Opinions; that submission Plans continue to require referral to Cabinet (but not Full Council) for authority to make representations.
13. In order to be able to meet the target for consideration of an examiner's report, it is considered proper that this be delegated to the Executive Director of Business Operations (or his nominated representative), in consultation with the Cabinet Portfolio Holder for Planning, except where he does not propose to accept the examiner's recommendations (including those relating to modifications and the extent of the referendum area) unless agreed with the relevant Town/Parish Council, or where it is proposed by the examiner that the Plan is not put forward to referendum. In these situations, the examiner's report would be referred to Cabinet.
14. The proposed qualifications would cover potential situations which would warrant Member involvement. In any event, it would not rule out the Executive Director from deciding not to use the delegated authority in any circumstances where it is considered in the best interests of the Council to report to Members.
15. The Local Development Scheme, setting out plan-making processes including management responsibilities, would need amending accordingly.

B. Brownfield Land Register, Permission in Principle and Technical Details Consent

16. In April 2017, new Regulations² came into force that require local planning authorities (LPAs) to prepare a Register of brownfield (previously developed) land in their area which is considered appropriate for residential development, to publish it by 31st December 2017 and thereafter update it on an at least annual basis.
17. The Register should comprise two parts; Part 1 includes all previously developed land that meets the following four criteria:
 - (a) the land has an area of at least 0.25 hectares or is capable of supporting at least 5 dwellings;
 - (b) the land is suitable for residential development;
 - (c) the land is available for residential development; and
 - (d) residential development of the land is achievable.
18. When deciding which sites to enter on the Register, a LPA must have regard to the Development Plan, national policies and advice and any guidance issued by the Secretary of State for the purpose of the Regulations.
19. Government only advised in July of the very specific way in which it will require all Brownfield Land Registers to be published; these requirements will

² [The Town and Country Planning \(Brownfield Land Register\) Regulations 2017](#)

involve a significant level of work to prepare the first Register. Accordingly, it is envisaged that only Part 1 of the Register will be prepared this year.

20. It is envisaged that Part 1 of the Register will essentially draw on existing information on brownfield land that is contained within the Council's bi-annual monitoring of housing sites with planning permission, Local Plan and Neighbourhood Plan allocations, and the Strategic Housing Land Availability Assessment. There is also a 'submission form' on the Council's website to allow people to submit sites for consideration for inclusion on the Register at any time, although none has been submitted to date. While LPAs may choose to consult on sites they proposed to include in Part 1 of the Register, this is not a requirement and is not considered necessary at this stage.
21. Part 2 of the Register is a subset of Part 1 and will comprise only those sites in Part 1 for which the LPA determines to grant 'Permission in Principle' (PiP) for residential-led development under Article 4 of the new Order³.
22. PiP is a new form of permission, similar to an outline planning permission in that only very basic details of the development proposal are required at PiP stage, including a red-line boundary plan for the site and a range for the number of housing units that the site could accommodate, while further details must subsequently be submitted to and approved before any development can proceed. This is referred to as 'Technical Details Consent' (TDC) and would be similar to the approval of a full planning application.
23. When granting PiP for a site, LPAs can provide information on the relevant entry on the Register about what they expect detailed proposals to include at the TDC stage.
24. In order to include any of the sites that are on Part 1 of the Register in Part 2 (and in so doing grant PiP to those sites), the LPA must first publicise, notify and consult on the intention to do this.
25. It is clear that the Constitution needs to cover the production of the brownfield register and the granting of PiP and TDC.
26. The decision to grant planning permission is a non-executive function under the Local Authorities (Functions & Responsibilities) Regulations 2000, and the new Regulations amend these to the effect that the decision to enter sites on Part 2 of the Register is also a non-executive function (as entering sites on Part 2 grants those sites PiP).
27. The authority for making decisions on planning applications rests with the Planning Committee, and so this report recommends to Council that the starting point for decision-making on those sites to be entered on Part 2 of the Register should be a function of the Planning Committee.
28. There is also a need to consider appropriate delegations for dealing with TDC applications, given the short timescales set out in the Order to determine such applications (i.e. 10 weeks for a major development and 5 weeks for a development not considered to be major, compared to 13 weeks and 8 weeks respectively for a standard planning application).

³ [The Town and Country Planning \(Permission in Principle\) Order 2017](#)

29. In addition to the above, the Government intends to shortly introduce two other routes created to granting PiP. The first will be through the Local Plan, where LPAs will be able to choose whether to grant PiP to sites allocated through their Local Plan if they wish. The second will be through independent applications for PiP for 'non-major' development made directly to LPAs.
30. The preparation and publication of Part 1 of the Register should not be controversial and will be generally a reflection of already assessed sites. Similarly, the decision to include sites on Part 2 of the Register is also expected to be relatively uncontroversial, as all the sites would have been assessed as suitable, in principle, for residential development in accordance with the Development Plan and other material considerations.
31. It is considered that for applications for PiP on non-major sites, as well as applications for all TDCs in accordance with the terms of a PiP, the process is regarded as akin to that for applications for full planning permission.
32. It is therefore recommended that:
- a) the Service Manager – Strategy and Planning be delegated authority to publish Part 1 of the Brownfield Land Register each year (Cabinet to approve this delegation);
 - b) authority to consult on, consider comments and enter sites onto Part 2 of the Register be delegated to the Service Manager – Strategy and Planning subject to a call-in procedure to Planning Committee in line with the existing 'Delegated system' within the Constitution (Planning Committee to approve this delegation);
 - c) in relation to applications for PiP and TDC, decision-making is also delegated to the Service Manager – Strategy and Planning, again subject to a call-in procedure as at (b) above (Planning Committee to approve this delegation).
33. These recommended amendments to the Council's Constitution are consistent with those already applying to other planning decisions.

C. Conservation Fund grant requests

34. The Council has a long-established fund for giving grants towards the repair and restoration of historic features that do not have any commercial value. It has been used to fund restoration works to a war memorial, a pump house, rotunda, etc.
35. The fund stands at some £30,000 and is no longer topped up, so will eventually run out. The level of grant is typically 25%. Past grants have generally been between £100 - £1,500. It is not widely promoted, which is reflected in the low take-up, but is a useful fund to support worthy schemes that are brought to the Council's attention.
36. There is no delegated authority for spending and all proposals have hitherto gone to Cabinet. However, given the sums involved are small, such schemes are not regarded as warranting Cabinet attention. Eligibility rules for the Fund have already been approved by Council, albeit many years ago. The

judgement of the historic merits is essentially a technical one and it is recommended that this forms part of the planning budget with the appropriate delegation to the Service Manager.

Conclusion

37. This report considers the need to seek Cabinet and Planning Committee endorsement of proposed changes to the Council's Scheme of Delegation, primarily in relation to planning policy matters, which are regarded as necessary to maintain proper and efficient service operations, whilst ensuring appropriate Member involvement in decision making. The proposals are in response to new legislation related to neighbourhood planning procedures, the new duty imposed on councils to prepare and maintain a Brownfield Land Register, consideration of sites for 'Permission in Principle' and 'Technical Details Consent' and the awarding of small conservation grants. A number of these delegations have also been identified through the Council's 'lean working' programme, to improve efficiency and provide greater clarity to certain functions through the Scheme of Delegation.

Dr Anthony Leonard
Executive Director of Business Operations

Risk Assessment Statement

Failure to produce the Brownfield Land Register by 31 December 2017 may result in restriction of future 'New Burdens' payments and could lead to the Council being censured.

The impact on resourcing of determining for 'Permission in Principle' and 'Technical Details Consent' is unknown, although this is partially mitigated by the award of 'New Burdens' payments which will be used to fund the service. Planning applications for 'Permission in Principle' and 'Technical Details Consent' will be subject to a fee although the full details of these fee payments have not yet been published.

Proposed changes in relation to neighbourhood planning processes give some further officer delegation but this is limited to the decisions as set out in the report where these would not give rise to any issues of conflict with the Council's strategic planning policies or with the relevant Town or Parish Council.

In respect of the conservation grant funding, eligibility rules have already been established by Council and hence the proposed delegation is not considered, also having regard to the funds involved, to raise any policy issues.

Proposed amendments to the Constitution

A. Neighbourhood planning (Executive Function)

Amend Part 8 Delegation to Officers as follows:

3. Executive Director of Business Operations (formerly Director of Services)

'Neighbourhood Planning

3.6 To fulfil (including through a nominated officer) all functions relating to the preparation of neighbourhood plans prior to formal adoption subject to:

- (a) this delegation shall not include the submission of formal representations to a submitted neighbourhood plan (authority for which rests with Cabinet);*
- (b) In relation to the consideration of an examiner's report and subsequent determination of whether a neighbourhood plan (including any recommended modifications) meets the statutory requirements and should be put to referendum, as well as the referendum area, this function to be undertaken in consultation with the relevant Portfolio Holder and will not extend to situations where the Director does not propose to accept an examiner's recommendations (including any modifications and the extent of the referendum area) unless agreed with the Qualifying Body, or where it the examiner recommends that a neighbourhood plan is not put forward to referendum. In these situations, the examiner's report would be referred to Cabinet for decision.'*

B. Brownfield Land Register, Permission in Principle and Technical Details Consent (Executive and Planning Committee Functions)

1. Add the following additional functions of Planning Committee within the Constitution:
 - a) Power to determine applications for Permission in Principle (PiP) and Technical Details Consent (TDC) (Section 58A, 70, 70A of the Town and Country Planning Act 1990 (as amended) or any subsequent alterations)*
 - b) Power to approve sites for entry into Part 2 of the Brownfield Land Register and so grant Permission in Principle (Section 58A, 70, 70A of the Town and Country Planning Act 1990 (as amended) or any subsequent alterations)*
 - c) Power to decline to approve sites for entry into Part 2 of the Brownfield Land Register (Section 58A, 70, 70A of the Town and Country Planning Act 1990 (as amended) or any subsequent alterations)*
2. Amend the following existing functions and delegations of Planning Committee:

1. *Power to determine applications for planning permission, Permission in Principle and Technical Details Consent. (Sections 70(1)(a) and (b) and 72 of the Town and Country Planning Act 1990 (c.8) as amended).*
4. *Power to decline to determine applications for planning, Permission in Principle and Technical Details Consent. (Section 70A of the Town and Country Planning Act 1990 as amended).*
3. Amend Officer scheme of delegation as follows:
 - a. Add new power to the Service Manager – Strategy and Planning, as follows:

Brownfield Land Register

3.1.XX *To prepare, publish and maintain the Council's Brownfield (previously developed) Land Register, including:*

- a) *All determinations associated with whether to enter land onto Part 1 of the Brownfield Land Register (for the avoidance of doubt including all relevant assessment as to whether land meets all the criteria for being entered);*
- b) *All necessary actions for the purposes of reviewing, amending, adding and removing entries from Part 1 of the Brownfield Land Register;*
- c) *Considering and determining:*
 - i. *The nature and extent of any consultation, publicity and procedures (to the extent that the relevant legislation provide any discretion in relation to such matters) to be undertaken in relation to entering and/or maintaining land on Part 1 of the Brownfield Land Register;*
 - ii. *How to proceed having regard to any representations received in relation to any such consultation, publicity and relevant procedures;*
- b. *Determining whether to propose land for residential development for a purpose (in whole or part) of enabling such land to be entered on Part 2 of the Brownfield Land Register*
- b. Amend the following functions by Service Manager – Strategy and Planning and in his absence the Development Manager:

3.1.6 *To determine application for planning permission, Permission in Principle and Technical Details Consent in accordance with the arrangements detailed under Delegated Procedures and to determine individual planning applications specifically delegated by Committee resolution and to prescribe conditions or reasons for refusal as appropriate.*

[Continue as previous]

3.1.7 *To refuse planning permission, Permission in Principle and Technical Details Consent for applications in circumstances where:*

(i) no extension of time is agreed and it is not possible to resolve any outstanding matters; and

(ii) there is insufficient time available for the application to be reported to the Planning Committee where either a first or an alternative resolution may be required.

Function also to be exercised by the Team Leader & North Bexhill Manager, Major Applications and Appeals Manager, Principal Officers (Level 5) and Senior Officers (Level 4) who are also Chartered Town Planners (MRTPI). (P)

C. Conservation Fund grant requests (Executive Function)

Add new power to the Service Manager – Strategy and Planning (and in his absence the Planning Policy Manager) under existing Planning Policy heading as follows:

3.1.XX To consider applications for and award of grants under the Council's Conservation Fund.