

## Rother District Council

Report to	-	Council
Date	-	20 February 2023
Report of the	-	Director of Place and Climate Change
Subject	-	Delegations to Officers – Planning Service

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**Recommendation:** It be **RESOLVED:** That the officer scheme of delegations in respect of the Planning Service, attached at Appendix 1 be approved and adopted.

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### Introduction

1. At the Planning Committee meeting held on 12 January 2023, the officer scheme of delegations for the Planning Service was approved by the Committee and the Council's Constitution updated accordingly.
2. Following legal advice, the Council's current Constitution requires amendment with respect to the approval process for delegations to officers, and this matter will be considered in due course and a report made to the Audit and Standards Committee in March in this regard.
3. In the interim, and following this legal advice, the amendments to the Planning Service delegations are submitted for approval and adoption by full Council.
4. For background, the original report submitted to the Planning Committee is attached at Appendix 2 to this report, together with the resulting Minute from the Planning Committee's deliberations at Appendix 3.

Ben Hook  
Director of Place and Climate Change

## **3.1 Director – Place and Climate Change / Development Manager**

### **Planning Service**

The Council's Cabinet and Planning Committee may delegate some of its functions and powers to specific officers of the Council. The following is a list of those delegations

C denotes from Cabinet.

P denotes from Planning Committee.

In the absence of the nominated officers delegated power may be exercised by the Chief Executive or such officer as the Chief Executive may nominate.

### **DEVELOPMENT MANAGER**

All functions exercised by Development Manager and in their absence the Development Management Team Leaders.

#### **Development Management**

- 3.1.1 To deal with applications for listed building consent under S10 of the Planning (Listed Buildings and Conservation Areas) Act 1990. (P)
- 3.1.2 To prescribe conditions or reasons for refusal or approval to be applied to any planning application determined by the Council for delegated decisions or resolved to be delegated by the Planning Committee. (P)
- 3.1.3 That where decisions of the Planning Committee vary from an officer recommendation the decision notice will not be issued until it agrees with the draft minutes approved by the Chair. Alignment of the two documents will take place within two clear working days of the receipt of the draft minutes. Should any issue be unresolved at the end of those two days it will be referred to the Head of Paid Service for final resolution.
- 3.1.4 To approve minor amendments to planning consents and to approve or disapprove any matter submitted as a condition of planning approval. Function also to be exercised by Team Leaders, Principal Officers (Level 5) and Senior Officers (Level 4). (P)
- 3.1.5 To deal with applications for Lawful Development Certificates under S191 and S192 of the Town and Country Planning Act 1990. Function also to be exercised by the Development Manager, Team Leaders Principal Officers (Level 5) and Senior Officers (Level 4). (P)
- 3.1.6 To determine applications for planning permission 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 or approval as appropriate. Under the delegated system all applications identified with the (DEL) notification on the weekly list will be dealt with by officers where there

are no conflicting views and the matter has not been subject to a call in 'call-in' by the ward member.

- 3.1.7 The weekly list sets out new applications on a ward basis, so that Councillors are fully aware of new submissions in their local area at the outset. They may call applications to Committee (clearly citing planning reasons and whether the call in is conditional or a recommendation of approval or refusal) up to seven days (no later than 5pm on the last day) after the closure of any weekly list publicity period or expiry of the site notice whichever is the later(P). The officer for a planning application is required to inform the ward member or chair of the committee of the expected outcome of an application prior to call in (or any time after) if requested by the ward member or chair of the committee. Under exceptional circumstances, the Chair of the Planning Committee be granted authority to call-in an application, at any time before the decision notice is issued after consultation with the local Ward Member(s).
- 3.1.8 Planning applications on the weekly list sets out the applications which are time limited and/or for information only, for example those set against the relevant regulations and those not subject to appraisal against planning policy. Such applications are not subject to any call-in measures.
- 3.1.9 Planning applications which are labelled (COM) automatically go to be determined at Planning Committee where the applicant is or is related to an elected member of the Council or member of Council staff, is for Council owned land, or applications submitted by the Council itself.
- 3.1.10 To refuse planning permission for applications in circumstances where no extension of time is agreed, and it is not possible to resolve any outstanding matters. Function also to be exercised by the Function also to be exercised by Team Leaders, Principal Officers (Level 5) and Senior Officers (Level 4) (P)
- 3.1.11 To rescind or revoke all obsolete, irrelevant or inoperative entries in the registers under his control relating to the Town and Country Planning Act 1990; Article 4 Directions made under the General Permitted Development Orders; the Town and Country Planning (Control of Advertisements) Regulations 1992, and Notices under Section 65 of the Public Health Act 1936. Function also to be exercised by the Function also to be exercised by Team Leaders, Principal Officers (Level 5) and Senior Officers (Level 4) (P) (C)
- 3.1.12 To exercise the Council's functions under Section 224 of the Town and Country Planning Act 1990 - power to remove or obliterate placards and posters. Function also to be exercised by the Function also to be exercised by the Development Manager and Development Management Team Leaders (C).
- 3.1.13 Acting in conjunction with the Solicitor to the Council to authorise Section 106 Planning Obligations or authorise the modification of existing Section 106 Planning Obligations which relate to planning control matters. (Any Obligations that relate to financial matters, including changes to affordable housing provision are to be referred to Planning Committee for decision). All

such Obligations to be concluded within a six month period of the authorisation unless extended at the discretion of the Development Manager or Solicitor to the Council. Function also to be exercised by the Development Management Team Leaders. (P)

- 3.1.14 To decide not to investigate alleged breaches of planning control where it is considered that the matter is not having a serious impact on amenity or the environment, having regard to the provisions of the development plan and any other material considerations and in this regard no investigations shall take place in respect of anonymous complaints or in respect of slight variations which would otherwise be permitted by the Town & Country (General Permitted Development) Order 2015 (as amended) or other minor development that amounts only to a technical breach. Function also to be exercised where appropriate by the Development Manager and Development Management Team Leaders. (P)
- 3.1.15 To take enforcement action, having first consulted with the Solicitor to the Council in respect of breaches of planning control, under Part V11 and Part VIII of the Town and Country Planning Act 1990 which are having a serious impact on amenity or the environment, having regard to the provisions of the development plan and any other material considerations. The Solicitor to the Council be authorised to take any other steps necessary to remedy the breach of planning control including legal action under Part VII and Part VIII of the Town and Country Planning Act 1990. Function also to be exercised where appropriate by the Development Manager and the Development Management Team Leaders. (P)
- 3.1.16 To issue Notices under Powers to require information in relation to Notices of the land under Section 330 of the Town and Country Planning Act 1990 and to issue Planning Contravention Notices under Section 171C of the Town and Country Planning Act 1990. Function also to be exercised where appropriate by the Development Manager and the Development Management Team Leaders. (P)
- 3.1.17 Acting through the Solicitor to the Council, to withdraw an enforcement notice which has been complied with, where it is considered that the breach of planning control cannot be repeated or waive or relax any requirements of any notice under Section 173A of the Town and Country Planning Act 1990. Function also to be exercised where appropriate by the Development Manager and the Development Management Team Leaders. (P)
- 3.1.18 Acting in consultation with the Solicitor to the Council, to extend the period for compliance with any enforcement notice under Section 173A where that would be expedient; such extension not to exceed 12 months. Function also to be exercised where appropriate by the Development Manager and the Development Management Team Leaders. (P)
- 3.1.19 The making of land use planning representations to the Traffic Commissioner on applications for Operators Licences made under the Goods Vehicles (Licensing of Operators) Act 1995. Function also to be exercised by the Development Manager and Development Management Team Leaders. (P)

- 3.1.20 The making of directions under Article 4 of the Town and Country (General Permitted Development) Order 1995. Function also to be exercised by the Development Manager and Development Management Team Leaders. (P)
- 3.1.21 To exercise the Council's functions in respect of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 or any subsequent replacement regulations. Function also to be exercised by Development Manager and Development Management Team Leaders. (P)
- 3.1.22 To make representations where necessary in respect of proposals made by Government Departments in consultation with the Chair of Planning Committee, where appropriate. (P)

### **Rights of Entry**

- 3.1.23 To authorise at his discretion officers (either generally or specifically) to exercise all or any statutory rights of entry in the Planning Acts and the Regulations made thereunder. (P)

### **Planning Policy**

- 3.1.24 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 Chair of Planning Committee. (C)

### **Tree Matters**

- 3.1.25 That the following actions shall be delegated to the Development Manager and Development Management Team Leaders:
- To determine applications to fell, lop or prune trees the subject of a tree preservation order or in a conservation area. (C)
  - To respond to Forestry Commission consultations on the basis of the Council's adopted policy. (C)
  - To deal with the hedgerow removal notices under The Hedgerow Regulations 1997 and to issue hedgerow retention notices. (C)
- 3.1.26 Acting through the Solicitor to the Council, to make such tree preservation orders as considered necessary. This justified through a report to be confirmed by the Development Manager and/or Development Management Team Leaders before the Order is confirmed detailing any objection received. (P)
- 3.1.27 To exercise the Council's functions in respect of High Hedges under Section 8 of the Anti-Social Behaviour Act 2003. Function to be exercised following consultation with and acting through the Solicitor to the Council. This justified through a report to be confirmed by the Development Manager and Development Management Team (P)

## **Highway Matters**

- 3.1.28 To deal with consultations by the East Sussex County Council on highway matters, including the creation, diversion and closure of footpaths and bridleways, and traffic management measures and highway Stopping Up Orders. (C)

## **Nature Conservation Matters**

- 3.1.29 To determine Appropriate Assessments submitted to the Council under the Conservation (Natural Habitats etc) Regulations 1994.

## **DIRECTOR – PLACE AND CLIMATE CHANGE – STRATEGY AND PLANNING AND BUILDING CONTROL MANAGER**

### **(Concurrent Power)**

- 3.1.30 To prepare and implement, after consultation with the Chief Finance Officer, a scheme for the charging of fees in accordance with the Building (Local Authority Charges) Regulations 1998.
- 3.1.31 To approve Site Waste Management Policies for the construction and demolition of sites after consultation with the Director – Place and Climate Change.
- 3.1.32 To issue decisions on all applications under the Building Regulations, and to determine applications for relaxation thereof. (C)
- 3.1.33 To employ qualified consultant structural engineers to check where necessary structural details of applications submitted under the Building Regulations. (C)
- 3.1.34 To exercise the Council's functions under the following Sections of the Building Act 1984. (C)

S.8	Relaxation of Building Regulations
S.16	Passing and rejection of plans
S.19	Use of short-lived materials
S.20	Use of materials unsuitable for permanent building
S.21	Provision of drainage
S.22	Drainage of buildings in combination
S.24	Provision of exits etc.
S.25	Provision of water supply
S.31	Proposed departure from plans
S.32	Lapse of deposit of plans
S.36	Removal of alteration of offending work
S.59	Drainage of buildings
S.72	Means of escape in case of fire
S.73	Raising of chimney
S.74	Cellars and rooms below subsoil water level
S.75	Consents under Section 74
S.76	Defective Premises
S.77	Dangerous Building

S.78	Dangerous building - emergency measures
S.79	Ruinous and dilapidated buildings and neglected sites
S.80. 81, 82	Demolitions
S.84	Paving and drainage of yards and passages
S.95	Power to authorise officers to enter premises

Revised January 2023

**Rother District Council**

<b>Report to:</b>	Planning Committee
<b>Date:</b>	12 January 2023
<b>Title:</b>	Planning Scheme of Delegation – Clarifications
<b>Report of:</b>	Myles Joyce, Interim Development Manager
<b>Ward(s):</b>	All
<b>Purpose of Report:</b>	The purpose of this report is to consolidate, clarify, review and approve the revised officer Scheme of Delegation including widened officer sign off powers, clarification of call in for amendments to legal obligations, powers in relation to tree works and the Planning Committee Chairs' emergency call in powers from October 2020, consolidated in March 2021 and November 2022.
<b>Officer Recommendation(s):</b>	It be <b>RESOLVED:</b> That Appendix 1 be approved as the Planning Scheme of Delegation and that the Constitution be amended accordingly.

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**Introduction**

1. Members will recall that a "Revision to the Planning Scheme of Delegation and other related changes" was presented to Committee on 13 August 2020 (Minute PL20/29 refers). Members approved the amendment of the officer Scheme of Delegation in respect of the Planning Service by the removal of the 'Notified D' report process and the insertion of an enhanced weekly list process as set out in the report and the consequent amendment of the Council's Constitution.
2. The new system was introduced on 6 October 2020 and was reviewed and accepted by Planning Committee in May 2021 (Minute PL21/09 refers).
3. At the same meeting, the Planning Committee Chair's resolution to clarify the limits of their emergency call in powers to Committee was also approved by the Planning Committee (Minute PL21/09 refers).
4. The above followed the approval of the Planning Committee for the procedure for the approval of minutes where the Planning Committee decision was contrary to officer recommendation in March 2021 (Minute PL20/98 refers).
5. It was considered to assist with the reduction in the backlog of planning applications, more rapid response with regard to taking formal enforcement action and to generally improve overall the decision making of officers, that

the scope for sign off of application under delegated authority was increased to Level 4 officers and above regardless of their RTPI status. These proposals were adopted by the Planning Committee November 2022.

6. It has been noted that notwithstanding the above certain aspects of the above approved amendments had not been updated in the wording of the Scheme of Delegation or Constitution. Accordingly, some officer titles have since been superseded by staff/organisation changes. Accordingly, the report before you seeks to clarify these delegated officer powers to reflect the current officer structure (Appendix 1).
7. It has also been noted that certain inconsistencies with regard to miscellaneous powers and tree works were inconsistent with the officer delegated powers of more recent amendments and this report seeks to amend these for the sake of clarity and consistency.
8. Finally, it is proposed to amend the Scheme of Delegation so it is clear that lawful development certificates and time limited applications that appear on the weekly list for information only or are not planning applications are not subject to call in powers and that accordingly, these amendments are sought in this report for the sake of clarity and consistency.
9. Therefore, in summation it is recommended to:
  - Update the Scheme of Delegation as approved on an interim basis by Planning Committee August 2020 and confirmed by Planning Committee March 2021 inserted in paragraphs 3.1.6 to 3.1.9 and including clarification of exemptions for time limited applications for information only as consistent with the delegated list.
  - To clarify sign off powers to Level 4 and above regardless of RTPI status, approved by Planning Committee November 2021 as inserted in 3.1.4 to 3.1.5 and 3.1.10 and 3.1.11.
  - To clarify sign off powers with regard to investigations and formal actions with regard to Planning Enforcement approved by Planning Committee November 2021 and set out in paragraphs 3.1.12 to 3.1.18.
  - To clarify approval of minutes where Committee decisions differ from officer recommendations confirmed by Planning Committee March 2021 inserted as paragraph 3.1.3.
  - To clarify that any amendments to planning obligation which relate to financial matters including changes to affordable housing provisions be reported to the Planning Committee as in paragraph 3.1.13.
  - To clarify powers under tree matters including making of Tree Preservation Orders and High Hedge Notices in paragraph 3.1.25 to 3.1.27.
  - To clarify powers with regard to miscellaneous matters including making of Article 4 directions and Rights of entry under paragraphs 3.1.19-3.1.24.
10. In accordance with Article 15 – Review and Revision of the Constitution, 15.3 Changes to the Constitution, as this matter is in connection with officer delegations that flow from the Planning Committee, this matter does not require full Council approval.

## Financial Implications

11. No additional financial implications identified.

## Legal Implications

12. Amend the delegation scheme in the Constitution.

## Risk Implications

13. Failure to revise the Constitution to simplify the planning delegation system will mean a continuation of the current lack of clarity and consistency which may hamper effective decision making.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	Consultation	No
Environmental	No	Access to Information	No
Sustainability	No	Exempt from publication	No
Risk Management	No		

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Appendices:	Appendix 1 – Proposed Scheme of Delegation
Relevant previous Minutes:	PL20/29 / PL21/09 / PL20/98
Background Papers:	-
Reference Documents:	-

PL22/106. **PLANNING SCHEME OF DELEGATION - CLARIFICATIONS**  
(11)

Consideration was given to the report of the Interim Development Manager regarding clarification and proposed changes to the Planning Scheme of Delegation (Part 8 – Delegations to Officers – 3.1 of the Council's Constitution).

Since August 2020, the Planning Committee had considered several of revisions to the Scheme of Delegations, which included amendments to the call-in procedure, legal obligations, powers in relation to tree works and the Chair of the Planning Committee's emergency call-in powers. The report detailed the changes and Appendix 1 attached to the report was the finalised version of the Planning Scheme of Delegation which included all the previously agreed changes, as well as additional amendments proposed by the Interim Development Manager (in agreement with the Chair of the Planning Committee).

The Planning Committee formally approved the Planning Scheme of Delegation with the following amendments and agreed that the Constitution be amended accordingly:

- reference to Chairman be changed to Chair throughout the document;
- 3.1.3 – Head of Paid Service be replaced with Chief Executive;
- 3.1.6 – last sentence to be reworded "Under the delegated system all applications identified with the (DEL) notification on the weekly list will be dealt with by officers where there are no conflicting views and the matter has not been subject to 'call-in' by a Member."
- 3.1.7 – to be split, 3.1.7 to finish at "if requested by the Ward Member or Chair of the Planning Committee; second part of 3.1.7 to be reworded and renumbered 3.1.8 "Where the time for call-in set out above has expired, a Member may subject to the agreement of the Chair of Planning Committee in agreement with the Development Manager, call-in a planning application where such an application is considered to be controversial or generate significant local interest. Under exceptional circumstances, the Chair of the Planning Committee will be granted authority to call-in an application, at any time before the Decision Notice is issued after consultation with the local Ward Member(s). Call-ins' may not be made under any other circumstances by officers or Members.
- 3.1.14 – remove the wording "and in this regard no investigations shall take place in respect of anonymous complaints". Replace "or" with "nor";
- 3.1.15 – add in reference to Council's adopted planning policy, guidance and local enforcement plan – officers to reword;
- 3.1.16 – reword "To issue Notices under Powers to require information in relation to the subject land under Section 330 of the Town and Country Planning Act 1990 and to issue Planning Contravention Notices under Section 171C of the Town and Country Planning Act 1990;
- 3.1.22 – delete; and

- to be renumbered, as appropriate.

**RESOLVED:** That the Planning Scheme of Delegation as set out at Appendix 1, with agreed amendments be approved and that the Constitution be amended accordingly.