

North Somerset Council

REPORT TO THE PLANNING & REGULATORY COMMITTEE

DATE OF MEETING: 13 OCTOBER 2021

SUBJECT OF REPORT: REVISED DELEGATION ARRANGEMENTS FOR PLANNING APPLICATIONS

TOWN OR PARISH: ALL

OFFICER/MEMBER PRESENTING: HEAD OF PLANNING

KEY DECISION: NO

RECOMMENDATIONS

1) That the changes to the Protocol and Code of Practice agreed by the Planning and Regulatory Committee as set out in appendix 3 to this report be made permanent.

1. SUMMARY OF REPORT

The Protocol for Delegating Planning Decisions to officers approved by Planning & Regulatory Committee on 12th April 2017 was temporarily amended by the Committee on 20th May and extended for a further 6 months on 14th October 2020 and again on 17th March 2021 due to operational constraints arising from the Covid-19 pandemic. The effect of the agreed amendments is to suspend and amend the automatic triggers for referral of certain planning applications to committee. Following the Planning Advisory Service (PAS) Peer Review of Planning it is now proposed to make the amended arrangements permanent.

2. POLICY

Ensuring speedy, proportionate and efficient decision making processes is consistent with Government expectations for the delivery of new development through the planning system. Effective delegation is fundamental element of efficient management systems.

3. DETAILS

Taking into account relevant guidance, the Committee agreed in May and October 2020 and again in March 2021 to amend temporarily the adopted Protocol for delegating planning applications to officers. This was done to remove some of the automatic triggers which result in applications being reported to the committee for decision in order to streamline decision making during the Covid pandemic. Prior to this there was an automatic referral process for certain Councillor, officer and Council applications as well as major applications which are departures from policy. Whilst such referrals are relatively rare, suspension of the

automatic referral process allows uncontentious applications to proceed under delegated powers. Local members, the Chairman and Director still retain the right to refer such applications to Committee should they wish.

In parallel to this, a Peer Review of Planning was carried out by the Planning Advisory Service (PAS) in January 2021. The aim of the Peer Review of Planning was to assess the operation of the Council's Planning service (the Service) focusing on pre application responses and decision making, structure and workforce, member engagement and Planning & Regulatory Committee (P&R Committee) in the context of becoming a more 'enabling' council.

The Review Team made 12 specific recommendations which were agreed by full Council on 19th July following detailed consideration by a member Working Group chaired by the Chair of the Place Policy and Scrutiny Panel. These are now in the process of being implemented as set out in the report to Council.

In this context, PAS recommendation 10 was to "ensure that the P & R Committee focuses on the most strategically important section 1 decisions in order to optimise time to facilitate enabling and growth agenda and address needs to deliver wider community benefits".

Section 1 of the Committee agenda is used to identify the applications with significant policy implications. The definitions of what applications fall within this category were set out in the report to Council on 17th June 2014 when the current Planning and Regulatory Committee arrangements were established. They are attached for noting as appendix 4 to this report.

The Member Working Group supported this recommendation. In doing so it recommended to Council that the revised delegation arrangements introduced during the Covid lockdown be made permanent. The Working Group was also supportive of the P&R Chairman playing a role in officer discussion with members seeking to refer uncontentious small applications to committee. It also recommended that members wanting to call applications in to committee should speak to the Chairman, Vice Chairman and officers first. It considered call into a committee should be an exception.

In accordance with this recommendation, which was agreed by Council, it is therefore proposed that the temporary changes to the delegation arrangements be made permanent. They have been in operation for 18th months without any significant operational issues arising and their permanent adoption would be consistent with the PAS recommendation.

It continues to be recognised that maintaining openness is a core North Somerset objective and it remains vital that there is no perception that any change to operating arrangements reduces public scrutiny or accountability. In this respect it is therefore important to continue to note that the member referral process would still enable contentious applications to be referred to Committee for decision even if the automatic trigger is removed.

For ease of reference, the adopted, pre-Covid Protocol for Delegating Planning Decisions to Officers, which was approved by Planning & Regulatory Committee in 2017, is attached as appendix 1 to this report. The temporary changes agreed by the Committee on three occasions (most recently in March) to suspend the automatic referrals identified above are set out in appendix 2 with a clean copy of the arrangements in appendix 3.

4. CONSULTATION

The Peer Review heard views from almost 100 stakeholders on a range of planning matters. The Committee arrangements have since been considered by a member Working Group chaired by the Chair of the Place Policy and Scrutiny Panel and by full Council.

5. FINANCIAL IMPLICATIONS

An efficient delegation system enables effective use to be made of resources and reduces costs involved in extending Committee time unnecessarily

6. LEGAL POWERS AND IMPLICATIONS

The Council Constitution delegates functions of the local planning authority, amongst other matters, to the Director of Place. This includes the authorisation of officers to exercise functions in accordance with statutory provisions. The Head of Planning and other senior officers within the Development Management service exercise these powers in the name of the Director, including the function to make decisions on planning applications.

7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Climate change and environmental impacts are considered on a case by case basis when applications are considered.

8. RISK MANAGEMENT

As set out in the report.

9. EQUALITY IMPLICATIONS

Decisions on planning applications are governed by published law and procedure. Access issues are taken into account in all planning decisions.

10. CORPORATE IMPLICATIONS

Article 6 of the Human Rights Act 1998 gives the right to a fair and public hearing.

11. OPTIONS CONSIDERED

Options considered include (a) delegating more applications to officers to determine or (b) continuing to refer planning applications to the Planning and Regulatory Committee.

AUTHOR

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APPENDICES

Appendix 1 The adopted Protocol for Delegating Planning Decisions to Officers
Approved by planning & regulatory committee 12th April 2017.

Appendix 2 Temporary Protocol agreed on 20 May 2020, 14th October 2020 and 17th March 2021 with agreed additions shown in bold text with agreed deleted text crossed through.

Appendix 3 Clean copy of Proposed Protocol

BACKGROUND PAPERS

Scheme of Delegation set out in the Council's Constitution

Reports to Planning and Regulatory Committee

LGA "Probity in Planning: Advice for Councillors and Officers making planning decisions" 2019.

Planning Advisory Service "Virtual planning committee – a hints & tips guide" April 2020

Planning Advisory Service Peer Review of Planning January 2020

"Response to Peer Review recommendations on Planning" Report to Council 19th July 2021 and associated minutes

APPENDIX 1

THE PRE-COVID PROTOCOL FOR DELEGATING PLANNING DECISIONS TO OFFICERS

APPROVED BY PLANNING & REGULATORY COMMITTEE 12TH APRIL 2017

All applications made under the Town and Country Planning Act (as amended) including applications for planning permission, listed building consent, consent to display an advertisement and Hazardous Substances Consent are delegated to the Director of Development and Environment to decide with the following exceptions which will be determined by the relevant Planning and Regulatory Committee.

- Any application within a Councillor's ward which that Ward Councillor requests be decided by Committee in accordance with the code of practice
- Any application which may have significant impact within a Ward, other than the Ward in which the application is sited, if the Ward councillor for the ward significantly impacted by the development refers the application to the committee in accordance with the code of practice.
- Applications submitted by or on behalf of the Chief Executive, a Director, Assistant Director of any Directorate (or equivalent); or a Head of Service in Development and Environment other than applications (a) made on behalf of the Council or (b) applications for the enlargement, improvement or other alteration of a dwelling house where no objections have been received.
- Applications submitted by or on behalf of any elected member of North Somerset Council other than applications for the enlargement, improvement or other alteration of a dwelling house where no objections have been received.
- Applications (other than applications for the enlargement, improvement or other alteration of a dwelling house where no objections have been received) submitted by or on behalf of any member of staff who works in either the Development Management Group or who has advised the Development Management Group on planning applications within the 12 months preceding the application
- Applications (other than applications for Lawful Development Certificates) submitted by or on behalf of North Somerset Council or on land owned or part owned by the Council where that application is either more than 1000sq.m in floor area or site area; or where the total number of residential units proposed is 10 or more; or where 10 or more letters raising material planning comments have been received where those comments are contrary to the officer's recommendation; or where a single letter signed by 10 or more signatories from different addresses in North Somerset raising material planning comments has been received and those comments are contrary to the officer's recommendation.
- Any application for major development* where it is recommended that permission be granted contrary to the development plan.

- Any application which the Director of Development and Environment or the Chairman and Vice Chairman of the Committee consider should be decided by Committee.
- Applications where the Planning and Regulatory Committee has resolved to grant planning permission subject to the applicant entering into a planning obligation (such as a S106 legal agreement) and where the required obligation is not completed either:
 - a) within 24 weeks (168 days) of the date when the application was first received as a valid application; or
 - b) before ten working days prior to any extended target date previously agreed in writing by the applicant

may be delegated to the Director of Development and Environment to determine in consultation with the Chairman, Vice-Chairman and Ward Member(s) without further reference to the Committee on the basis of there being no planning obligation.

Applications where the Planning and Regulatory Committee has resolved to grant planning permission subject to the applicant entering into a planning obligation (such as a S106 legal agreement) and where subsequent amendments to draft heads of terms of legal agreements previously agreed by the Committee are needed, these are delegated to the Director of Development and Environment subject to agreement by the Chairman, Vice-Chairman and Ward Member(s) without further reference to the Committee

* “major development” means development involving any one or more of the following—

- (a) the winning and working of minerals or the use of land for mineral-working deposits;
- (b) waste development;
- (c) the provision of dwellinghouses where —
 - (i) the number of dwellinghouses to be provided is 10 or more; or
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (e) development carried out on a site having an area of 1 hectare or more;

Notes

1. For the avoidance of doubt, any application for major development where it is recommended that permission be granted contrary to the development plan will be referred to the Planning and Regulatory Committee for decision regardless of the status or nature of the applicant.
2. Applications submitted by the spouse or partner of a Councillor or staff member to whom the protocol applies will be treated as if they had been made by the Councillor or staff member personally.
3. Should there, in any individual case, be a doubt over the interpretation or transparency of these arrangements, the Head of Development Management or the relevant Service Manager in the Development Management Group (in consultation

- with the Chairman of the Planning and Regulatory Committee if appropriate) will decide whether the application ought to be referred to the Committee for decision.
4. In the event that a Ward Member is unavailable due to long term illness or the seat on the Council becomes vacant the relevant Party Group Leader may authorise another Councillor to exercise the absent Ward Member's powers to request applications be decided by Committee as set out in the Protocol for the period of their absence.
 5. Applications where the decision would conflict with an objection received from Historic England, Natural England, the Environment Agency or Highways England will normally be notified by the case officer to the relevant Ward Member before a decision is made to enable the member to decide whether to refer the application to the Committee for decision.
 - 6 The powers delegated to the Director are exercised on a day to day basis by the front line managers responsible for the running of the service. These are the Head of Development Management, the Service Managers in the Development Management Group and their nominated deputies.

THE CODE OF PRACTICE FOR REFERRAL OF PLANNING APPLICATIONS AND ENFORCEMENT CASES BY COUNCILLORS TO COMMITTEE

- Ward Members are notified weekly in writing by e-mail of all planning applications received in their ward.
- The relevant planning officer will update Ward Members on any individual application as requested.
- All letters of support and objection are displayed on the Council's website until the application has been determined.
- The Case Officer will, by appointment, be available to discuss any current planning application with the relevant Ward Member(s). Members are encouraged to discuss applications with the Case Officer or Service Manager before requesting that an application be referred to the Planning and Regulatory Committee.
- Members may request that any application is referred to the Planning and Regulatory Committee so long as the application site is within the Ward they represent, or the application is in an adjoining Ward and significantly affects the Ward they represent. The request must be made in writing providing reasons for requesting the referral and be received before the Director of Development and Environment's authorised representative has countersigned the case officer's written recommendation.
- The Member's request must be made in writing by letter or e-mail **and sent** to the case officer, Service Manager and team email address dadminrequest@n-somerset.gov.uk
- Members may qualify their request so that the application need only be referred to the Planning and Regulatory Committee if the officer's recommendation is contrary to the Member's view.
- If the application involves an enforcement issue, it will be treated no differently from other planning applications.

- Enforcement cases may only be referred to a Committee by the Chairman of the Planning and Regulatory Committee, the Head of Development Management or the Delivery and Enforcement Service Manager.
- All decisions made under delegated powers are circulated monthly to councillors.

APPENDIX 2

THE TEMPORARY PROTOCOL FOR DELEGATING PLANNING DECISIONS TO OFFICERS

**Previously Approved By The Planning and Regulatory Committee on 20 May 2020, 14
October 2020 and 17 March 2021**

Agreed additions are shown in **bold text** with deleted text crossed through.

All applications made under the Town and Country Planning Act (as amended) including applications for planning permission, listed building consent, consent to display an advertisement and Hazardous Substances Consent are delegated to the Director of Development and Environment to decide with the following exceptions which will be determined by the relevant Planning and Regulatory Committee.

- Any application within a Councillor's ward which that Ward Councillor requests be decided by Committee in accordance with the code of practice
- Any application which may have significant impact within a Ward, other than the Ward in which the application is sited, if the Ward councillor for the ward significantly impacted by the development refers the application to the committee in accordance with the code of practice.
- ~~Applications submitted by or on behalf of the Chief Executive, a Director, Assistant Director of any Directorate (or equivalent); or a Head of Service in Development and Environment other than applications (a) made on behalf of the Council or (b) applications for the enlargement, improvement or other alteration of a dwelling house where no objections have been received.~~
- ~~Applications submitted by or on behalf of any elected member of North Somerset Council other than applications for the enlargement, improvement or other alteration of a dwelling house where no objections have been received.~~
- ~~Applications (other than applications for the enlargement, improvement or other alteration of a dwelling house where no objections have been received) submitted by or on behalf of any member of staff who works in either the Development Management Group or who has advised the Development Management Group on planning applications within the 12 months preceding the application~~
- Applications (other than applications for Lawful Development Certificates) submitted by or on behalf of North Somerset Council or on land owned or part owned by the Council **where that application is either more than 1000sq.m in floor area or site area; or where the total number of residential units proposed is 10 or more; or where 40 50 or more letters* raising material planning comments have been received where those comments are contrary to the officer's recommendation; or where a single letter signed by 40 50 or more signatories from different addresses in North Somerset raising material planning comments has been received and those comments are contrary to the officer's recommendation.**
- ~~Any application for major development* where it is recommended that permission be granted contrary to the development plan.~~

- Any application which the Director of Development and Environment or the Chairman and Vice Chairman of the Committee consider should be decided by Committee.
- Applications where the Planning and Regulatory Committee has resolved to grant planning permission subject to the applicant entering into a planning obligation (such as a S106 legal agreement) and where the required obligation is not completed either:
 - c) within 24 weeks (168 days) of the date when the application was first received as a valid application; or
 - d) before ten working days prior to any extended target date previously agreed in writing by the applicant

may be delegated to the Director of Development and Environment to determine in consultation with the Chairman, Vice-Chairman and Ward Member(s) without further reference to the Committee on the basis of there being no planning obligation.

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*** for the purpose of this protocol a “letter” includes an email or comment made on the application via the Council’s online system for commenting on planning applications.**

~~* “major development” means development involving any one or more of the following—~~

- ~~(a) the winning and working of minerals or the use of land for mineral-working deposits;~~
- ~~(b) waste development;~~
- ~~(c) the provision of dwellinghouses where—~~

- ~~(i) the number of dwellinghouses to be provided is 10 or more; or~~
- ~~(ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);~~

- ~~(d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or~~

- ~~(e) development carried out on a site having an area of 1 hectare or more;~~

Notes

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- 2 Applications submitted by the spouse or partner of a Councillor or staff member to whom the protocol applies will be treated as if they had been made by the Councillor or staff member personally.
- 3 Should there, in any individual case, be a doubt over the interpretation or transparency of these arrangements, the Head of ~~Development Management~~ **Planning** or the relevant Service Manager in the Development Management Group (in consultation with the Chairman of the Planning and Regulatory Committee if appropriate) will decide whether the application ought to be referred to the Committee for decision.
- 4 In the event that a Ward Member is unavailable due to long term illness or the seat on the Council becomes vacant the relevant Party Group Leader may authorise another Councillor to exercise the absent Ward Member's powers to request applications be decided by Committee as set out in the Protocol for the period of their absence.
- 5 Applications where the decision would conflict with an objection received from Historic England, Natural England, the Environment Agency or Highways England will normally be notified by the case officer to the relevant Ward Member before a decision is made to enable the member to decide whether to refer the application to the Committee for decision.
- 6 The powers delegated to the Director are exercised on a day to day basis by the front line managers responsible for the running of the service. These are the Head of Development Management, the Service Managers in the Development Management Group and their nominated deputies.

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- Members may request that any application is referred to the Planning and Regulatory Committee so long as the application site is within the Ward they represent or the application is in an adjoining Ward and significantly affects the Ward they represent. The request must be made in writing providing reasons for requesting the referral and be received before the Director of Development and Environment's authorised representative has countersigned the case officer's written recommendation.
- **Members are requested to limit the call in of minor applications to committee only to cases where they consider it is absolutely essential in the public interest for the decision to be made in public**

- The Member's request must be made in writing by letter or e-mail and sent to the case officer, Service Manager and team email address dadminrequest@n-somerset.gov.uk
- Members may qualify their request so that the application need only be referred to the Planning and Regulatory Committee if the officer's recommendation is contrary to the Member's view.
- If the application involves an enforcement issue, it will be treated no differently from other planning applications.
- Enforcement cases may only be referred to a Committee by the Chairman of the Planning and Regulatory Committee, the Head of Development Management or the Delivery and Enforcement Service Manager.
- All decisions made under delegated powers are circulated monthly to councillors.

APPENDIX 3

THE PROTOCOL FOR DELEGATING PLANNING DECISIONS TO OFFICERS

CLEAN COPY INCORPORATING PROPOSED CHANGES**

All applications made under the Town and Country Planning Act (as amended) including applications for planning permission, listed building consent, consent to display an advertisement and Hazardous Substances Consent are delegated to the Director of Development and Environment to decide with the following exceptions which will be determined by the relevant Planning and Regulatory Committee.

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- Applications (other than applications for Lawful Development Certificates) submitted by or on behalf of North Somerset Council or on land owned or part owned by the Council where 50 or more letters* raising material planning comments have been received where those comments are contrary to the officer's recommendation; or where a single letter signed by 50 or more signatories from different addresses in North Somerset raising material planning comments has been received and those comments are contrary to the officer's recommendation.
- Any application which the Director of Place or the Chairman and Vice Chairman of the Committee consider should be decided by Committee.
- Applications where the Planning and Regulatory Committee has resolved to grant planning permission subject to the applicant entering into a planning obligation (such as a S106 legal agreement) and where the required obligation is not completed either:
 - e) within 24 weeks (168 days) of the date when the application was first received as a valid application; or
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may be delegated to the Director of Place to determine in consultation with the Chairman, Vice-Chairman and Ward Member(s) without further reference to the Committee on the basis of there being no planning obligation.

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* for the purpose of this protocol a “letter” includes an email or comment made on the application via the Council’s online system for commenting on planning applications.

- 1 Applications submitted by the spouse or partner of a Councillor or staff member to whom the protocol applies will be treated as if they had been made by the Councillor or staff member personally.
- 2 Should there, in any individual case, be a doubt over the interpretation or transparency of these arrangements, the Head of Planning or the relevant Service Manager in the Planning service (in consultation with the Chairman of the Planning and Regulatory Committee if appropriate) will decide whether the application ought to be referred to the Committee for decision.
- 3 In the event that a Ward Member is unavailable due to long term illness or the seat on the Council becomes vacant the relevant Party Group Leader may authorise another Councillor to exercise the absent Ward Member’s powers to request applications be decided by Committee as set out in the Protocol for the period of their absence.
- 4 Applications where the decision would conflict with an objection received from Historic England, Natural England, the Environment Agency or Highways England will normally be notified by the case officer to the relevant Ward Member before a decision is made to enable the member to decide whether to refer the application to the Committee for decision.
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- Enforcement cases may only be referred to a Committee by the Chairman of the Planning and Regulatory Committee, the Head of Planning or the Delivery and Enforcement Service Manager.
- All decisions made under delegated powers are circulated monthly to councillors.

** Officer job titles updated since March report.

APPENDIX 4

Section 1 definitions

Section 1 of the Committee agenda is used to identify the applications with significant policy implications.

The following definitions were set out in the report to Council on 17th June 2014 when the current Planning and Regulatory Committee arrangements were established

Section 1 applications	Rationale
All "Major" applications (which are not reserved matter applications)	"Major applications" are nationally defined and generally will have significant policy implications. Reserved matter applications as a rule will not have significant policy implications as the principle is established at the outline stage.
All Applications in the Green Belt other than house extensions, replacement dwellings or barn conversions	Green Belt is a national policy designation where inappropriate development should be permitted except in very special circumstances. Decisions to approve, other than small scale developments, are likely to have significant policy implications.
All Applications in the AONB other than house extensions, replacement dwellings or barn conversions	AONBs are a national policy designation where tight controls need to be applied. Decisions to approve, other than small scale developments, may have significant policy implications.
All applications where a refusal contrary to officer recommendation may expose the Council to an award of costs or judicial review	Costs may be awarded or judicial review threatened where the council does not follow formal policies or procedures. National planning policy on the award of costs is set out in the National Planning Policy Guidance 2014*. For example, costs would be awarded if the council refuses an application which accords with material policies or proposals in the development plan, and the Council is unable to show that there are any other material considerations supporting such a refusal. Similarly, local opposition to a proposal is not, by itself, a reasonable ground for the refusal of a planning application, unless that opposition is founded on valid planning reasons which are supported by substantial evidence. A decision based solely on local opposition might expose the council to a risk of costs should an appeal be granted

<p>All applications where there has been a recent and relevant appeal decision or case law which gives clear guidance on the policy approach to be taken in a given case.</p>	<p>Planning policies are tested through the appeal and judicial process and the approach inspector's and the courts take to the interpretation of a policy should carry significant weight in future decisions. There can be significant policy implications arising from a decision to disregard such decisions.</p>
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* Superseded by the National Planning Policy Framework (NPPF) and National Planning Policy Guidance (PPG)