

## **DEVELOPMENT MANAGE – SCHEME OF DELEGATION**

### **Executive Summary**

Following a proposition from councillors, Group Leaders agreed that there should be a review of the Council's Scheme of Delegation to the Development Manager, with the objective being to make development management processes more effective and efficient. The review has been undertaken by the Deputy Chief Executive, the Development Manager and Councillors Ashall, Aziz, Barker, Boote, Chrystie and Cundy. The review comprised a virtual general discussion on 29 April 2020 and a virtual meeting on 19 June 2020 which considered an officer report with a recommended revised scheme of delegation in respect of the existing scheme "3. Planning Applications, etc."

The officer's report was largely supported by all Members. However, there was not unanimous agreement on the trigger threshold in relation to the number of dwellings proposed in a development. The officer advice was that the trigger for the application to be determined by the Planning Committee should be over 10 dwellings which is consistent with the national definition of "major developments". The majority of Members felt this threshold to be too high and, following debate, a consensus view emerged supporting a threshold of over 5 dwellings.

A second issue arose in respect of the following provision which retains "the ability of a councillor to request any application be reported to the Planning Committee provided a valid planning reason is supplied". The Group agreed to retain this important provision but to delete the word "valid".

A third issue which arose in the discussion was the need to ensure that Members and the public have clarity from the outset as to whether or not an application automatically falls to be considered by the Planning Committee. It was agreed that the best way to achieve such clarity would be for the published weekly list of planning applications received to mark with an asterisk all such applications.

The proposed revised delegations to the Development Manager are set out in Appendix 3 to this report. It is recommended that this revised delegation takes effect in respect of all applications determined after 31 July 2020.

### **Recommendations**

The Planning Committee is requested to:

#### **RECOMMEND TO COUNCIL that**

**With effect from 1 August 2020, the current delegations to the Development Manager be rescinded and replaced by those in Appendix 3 to this report.**

### **Reasons for Decision**

Reason: To ensure the local planning authority has up to date, efficient and effective decision making processes as required by Government.

The item above will need to be dealt with by way of a recommendation to Council.
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<b>Background Papers:</b>	None.
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### **1.0 Introduction**

- 1.1 The framework which allows a local authority to arrange for any of its functions to be delegated to one of its officers is contained under Section 101 of the Local Government Act 1972 Act. In particular section 101(1) provides that (subject to any express statutory provision) a local authority may arrange for the discharge of any of its functions by a committee, sub-committee or one of its officers.
- 1.2 For the purpose of expediency and to maintain quick decision making processes, some decisions are delegated to Officers. This is a key part of the Council's day to day functioning allowing everyday operational and less impacting decision to take place on normal every day matters. It is important to continually review the operational needs of the Planning Service and the needs upon the service evolve over time. It is therefore necessary to strike the correct balance between the efficient and timely processing of planning applications and decisions made by officers and the need for the Planning Committee to be able to scrutinise and decide those applications which have an important role in fulfilling strategic objectives or are contentious and require closely balanced judgements.
- 1.3 The Planning Committee is a regulatory committee with responsibility for all functions relating to Town and Country Planning and Development Control as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended). The primary role of Councillors on the committee is to make planning decisions based on the development plan and relevant material planning considerations. It is not to represent local community views. Planning decisions need to ensure they accord with the Development Plan unless material considerations indicate otherwise (including the NPPF).
- 1.4 The current scheme of delegation was last reviewed in 2016 and makes reference to types of application which no longer exist (e.g. Conservation Area Consents which have been abolished). There has also been a considerable number of significant changes in legislation since the scheme of delegation was last reviewed. The current scheme of delegation is not an easy document to navigate even for those experienced in the planning process or local government and it is not easy for members of the public to understand. The current scheme of delegation is appended at Appendix 1.
- 1.5 The current scheme of delegation can be considered as out of step with the Council's vision and values. The values under the 'Us: an innovative, proactive and effective Council' section requires the Council to 'develop the skills and behaviours of staff and making the best use of resources (money, people, assets) to deliver services' and 'give clear messages about the boundaries within which we expect our staff to work, encouraging them to take ownership and empowering them to take measured risks when taking action or making decisions within those boundaries'. As will be explained further in the report, there is a significant number of applications reported to Planning Committee which are neither contentious, strategic and involve little, if any, debate by Councillors and thus is not making the best use of resources as the cost of reporting applications to Planning Committee is significantly higher than decisions made by officers. Furthermore, these type of applications do not empower officers to make decisions.

### **2.0 Current Scheme of Delegations**

- 2.1 Analysis shows that committee agendas are heavily weighted with items that are not strategic or contentious and a significant number of applications involve little or no debate. Delays in the determination of applications on these types of applications occur and if the application is submitted at certain times of the year (where there is no Planning Committee for up to 6/7 weeks e.g. summer and around May elections), the delays can be significant. This results in an inefficient service being provided. Furthermore, local planning authorities are under continually increasing pressure to determine applications within statutory and agreed time limits otherwise there is a risk of being a designated authority and the power to

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determine planning applications is taken away. This would mean that decisions will not be made at the local Woking level but by the Planning Inspectorate instead.

- 2.2 When compared to other local planning authorities, Woking has a relatively low percentage of applications being determined by officers. The figure for Woking is 90%. This compares to the average for England of 94%. Elsewhere in Surrey, Epsom and Ewell and Guildford both have the highest figure with 97% delegated. The full list of Surrey Districts is included in Appendix 2.
- 2.3 Schemes of delegation vary across other Surrey LPA's ranging from the trigger threshold in relation to the number of residential development proposed being 5 dwellings to no threshold where applications of any size can be determined under delegated authority. However, the majority of the other Surrey LPA's (7 out of 10 – excluding Woking) the size threshold in connection with residential development is a minimum of 10 dwellings (i.e. developments which are defined as 'major'). In comparison, at Woking, all new residential development needs to be reported to the Planning Committee including proposals for replacement dwellings.
- 2.4 In relation to the erection of new non-residential buildings, the size threshold for all other Surrey LPA's is a minimum of 1000sq.m (i.e. developments which are defined as 'major') whilst at Woking there is no size threshold and therefore all new buildings for non-residential development needs to be reported to planning committee irrespective of size. Examples of this type of development which have been reported to the Planning Committee include an application for 2 timber gates measuring 1.5m and 1.75m wide with a height of 1.35m and a greenhouse measuring 2.6m wide by 5.1m deep with a height of 2.6m.
- 2.5 As can be noted above, at all other Surrey LPA's, officers have greater delegated authority which results in the need for less planning applications being reported to the Planning Committee.

### 3.0 Proposal

- 3.1 The Planning Advisory Service (PAS) which is part of the Local Government Association advises that almost all decisions should be made by planning officers under delegated powers leaving a few important, strategic or especially contentious applications for planning committee. PAS further advises that *'a good planning service has a clearly understood and accepted delegated arrangements that enables decisions to be taken at the right level.'*
- 3.2 Regard in formulating a revised scheme of delegation has been made to the PAS advice as well as looking at the delegation arrangements of other Surrey LPA's and taking into account that over half of the applications which are reported to the Planning Committee are 'minor development' where the vast majority have no or little objections raised on them. The proposed scheme of delegation is set out in appendix 3.
- 3.3 The main points to note are:
  - a. The principle of all decisions being delegated to officers with exceptions introduced. This is in line with the PAS advice of having a clearly understood delegation arrangement and to allow changes to legislation to be delegated effectively without referral to Planning Committee.
  - b. Major planning applications, where the recommendation would be for approval, to be reported to Planning Committee allowing all other decisions to be delegated (subject to the exceptions below). This in line with PAS advice that the Planning Committee should deal with only strategic or especially contentious applications, be consistent with the majority of Surrey LPA's, reflects the Council's vision and values and reflect that

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over the period of March 2019 to March 2020 the majority of applications reported to planning committee were minor with no/minimal objections received.

- c. Retain that applications submitted by or on behalf of a member of staff or Councillor will be reported to Planning Committee.
  - d. Retain that applications submitted by Woking Borough Council be reported to Planning Committee except where an application is a non material amendment or a minor material amendment
  - e. Retain the ability of a Councillor to request any application be reported to Planning Committee provided a planning reason is supplied
  - f. Retain the requirement that where enforcement notices are required to be served they are reported to Planning Committee (except in cases of urgency, where the existing delegations would continue to apply).
  - g. Retain the requirement where there are objections received upon confirming tree preservation orders (TPO's), they are reported to Planning Committee.
- 3.4 The role of the Planning Committee is key in reaching decisions on matters which shape the Borough. The most controversial applications are not necessarily the largest schemes for new development and it is not possible to draft parameters which allow for these smaller schemes to automatically come before the Planning Committee without capturing other schemes which would not be of concern. It is therefore important to retain the provision by which Councillors can call in an application for determination by the Planning Committee.
- 3.5 Councillors are actively encouraged to talk to officers about planning applications at an early stage and are sent a weekly list of all applications received which sets out the date the application is made. In addition all applications are available for viewing online once valid including any representations from objectors/supporters and consultees.
- 3.6 Analysis of the 13 Planning Committees which took place between 19 March 2019 and 17 March 2020 shows there were 110 applications reported to committee. If the proposed scheme of delegation was adopted, this would have resulted in 52 applications reported to planning committee whilst the other 58 applications, which were for 'minor' development (53% of total), would be delegated.
- 3.7 Out of these 58 applications that would have been delegated under the proposed scheme, the vast majority had either no objection or very limited number of objection letters received (22 applications had no objections, 12 applications had 1 letter of objection and 6 applications had 2 letters of objections). 48 of these 58 applications received 4 or less objection letters.

### **4.0 Financial**

- 4.1 The cost of reporting an application to the Planning Committee is significantly higher than a decision issued under delegated powers. Issuing a decision which has been reported to the Planning Committee involves additional steps and therefore costs when compared to decisions issued under delegated powers. This includes Councillors on the Planning Committee having to read long committee agenda's and familiarising themselves with all the applications being reported to Committee.
- 4.2 It is therefore envisaged there would be a cost saving to be made as a result of less applications being reported to the Planning Committee and freeing up Councillors' time so they can concentrate on other Council business. Delegation does not mean there is less rigour in considering all the relevant issues.

REPORT ENDS

## **Development Manager – Scheme of Delegation**

**Current Scheme of Delegation**

**DEVELOPMENT MANAGER**

1. Environmental Assessment: To determine, as appropriate, the division of planning applications into the categories identified in Schedules 1 and 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, and to require the submission of such environmental information as may be necessary in respect of Schedule 2 development (6/TP/13.11.90/381).
2. Planning and Compensation Act 1991 (references below to 1990 Act are to the Town and Country Planning Act 1990):
  - (a) Emergency Enforcement/Stop action: to approve in consultation with the Chairman the taking of enforcement and Stop Action in an emergency;
  - (b) Breach of Condition Notices: to approve the issue of Notices alleging a breach of condition (Section 187A of the 1990 Act);
  - (c) Certificates of Lawful Use or Development: to determine applications for Certificates of Lawfulness of existing or proposed use or Development (Sections 191/2 of the 1990 Act) in consultation with the Corporate Services Manager (6/TP/10.9.91/200); and
  - (d) Temporary Stop Notices: to approve the service of Notices under Section 171E of the 1990 Act (this authority shall also extend to the Development Manager's authorised Deputies and such other Planning Officers, Arboricultural Officers and Planning Enforcement Officers as may be authorised from time to time).
3. Planning Applications, etc.: There shall be delegated to the Development Manager or in his/her absence, authorised Deputies, power to determine the following categories of planning applications and other matters:
  - (a) householder applications, i.e. developments falling within the curtilage of residential properties which require planning consent and are not a change of use;
  - (b) change of use applications which in the opinion of the Head of Planning Services do not raise significant planning issues;
  - (c) minor applications proposing extensions and/or alterations to non-residential properties;
  - (d) applications for approval of samples of building materials and/or landscaping schemes;
  - (e) applications for the renewal of period consent (unless there has been a material change of circumstances);
  - (f) applications for the renewal of time expired consents where there has been no material change in circumstances;
  - (g) applications submitted under the Advertisement Regulations;
  - (h) the location of equipment by statutory undertakers;

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- (i) responses to consultations by Surrey County Council, neighbouring authorities, utility companies or other statutory authorities which in the opinion of the Development Manager do not raise significant planning issues;
- (j) the making of Tree Preservation Orders after consultation with Chairman or Vice-Chairman (Ward Member(s) for information) and the subsequent confirmation of the TPO within 6 months where no objections have been received; the revocation of Area TPOs where they are being replaced by new TPOs or where they no longer meet the Council's agreed selection criteria, in consultation with the Chairman or Vice-Chairman (Ward Member(s) for information) and no objections have been received (these authorities extend to nominated deputies);
- (k) applications to fell, lop or top trees subject to Tree Preservation Orders or which fall within Conservation Areas (this authority extends to nominated deputies);
- (l) relaxation and/or minor variations to conditions or agreements subject to which planning permission was granted;
- (m) applications which involve minor amendments to previously approved proposals;
- (n) refusal of applications which are clearly contrary to Development Plan policy, and where there are no special circumstances which might justify a departure from policy;
- (o) the refusal of applications which have attracted a recommendation to refuse from the Highway Authority;
- (p) shop front applications;
- (q) the serving of a Building Preservation Notice in emergency after consultation with the Chairman or Vice-Chairman (Ward Member(s) for information);
- (r) decisions that a proposed amendment to an approved scheme is insufficient to require the submission of a further planning application;
- (s) applications for Conservation Area Consent to demolish buildings or structures and which do not require planning consent;
- (t) reserved matters applications which are considered by the Development Manager to be consistent with an outline consent and which do not raise significant planning issues;
- (u) applications in respect of Listed Buildings which in the opinion of the Development Manager do not raise significant planning issues;
- (v) reserved matters applications where siting has been agreed in an outline consent and which in the opinion of the Development Manager do not raise significant planning issues;
- (w) applications for a determination of whether the prior approval of the Local Planning Authority would be required pursuant to the Town and Country Planning General Permitted Development Order 1995; and
- (x) in consultation with the Chairman, applications that the Planning Committee has resolved should be approved subject to the prior completion of a Section 106 Agreement where such Agreement has not been completed within a time-scale considered reasonable by the Development Manager.



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- (y) 'High Hedges': The Development Manager (or his/her appointed officers) is authorised to determine applications of complaint over high hedges under the Anti-Social Behaviour Act 2003 (29.04.05/Standing Order 23.2).
- (z) Town and Country Planning (General Development Procedure) (Amendment No. 3) (England) Order 2009 and Planning (Listed Buildings and Conservation Areas)

(Amendment) (England) Regulations 2009:

- o Extensions to the time limits for implementing existing planning permissions and consents (including applications submitted by Woking Borough Council and Thamesway Group companies);
- o Non-material amendments to existing planning permissions and consents (including applications submitted by Woking Borough Council and Thamesway Group companies), and
- o Minor material amendments to existing planning permissions and consents (including applications submitted by Woking Borough Council and Thamesway Group companies).

NOTE: (1) These delegations will not apply insofar as an application:

- i) involves an elected Member of the Council; or
- ii) involves a member of the Council's staff; or
- iii) has been submitted by Woking Borough Council (save in respect of the delegation at paragraph 3(z) above).

(2) The Development Manager (or in his/her absence an authorised Deputy) shall determine applications at weekly meetings. The officers shall refer, at their discretion, particular applications to the Planning Committee for determination.

(3) No decision shall be made on any delegated application until 21 days have elapsed from the date of the neighbour notification letter.

(4) It is intended that the delegation at paragraph 3(x) above will be exercised where the Development Manager is satisfied that there is no reasonable prospect of the Section 106 Agreement being completed within a reasonable timescale.

- 4. Protection and Preservation of Trees and Hedgerows: To determine notifications within intended hedgerow removal; to approve or refuse consent as appropriate within the prescribed six week period; to issue or withdraw Hedgerow retention notices in respect of hedgerows classified as "important" within the statutory criteria; to issue Hedgerow replacement notices in appropriate cases; to take all necessary steps in connection with appeals.
- 5. Historic Building Repair and Community Projects Grants: To approve grants in accordance with the agreed criteria, in consultation with the Chairman and the appropriate Ward Councillors.
- 6. Urgent Works Notice: To serve any Urgent Works Notice under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 for the urgent protection of all listed Buildings in the Borough, in consultation with the Chairman and all Ward Councillors.

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7. Licensing Act 2003: The Development Manager (or an authorised deputy in his/her absence) is authorised to object to a proposed licence application on Planning Grounds.
8. Breach of Condition Enforcement Notices: The Development Manager Development Manager is authorised to approve the issue of Enforcement Notices (failing to comply with a condition or limitation subject to which planning permission has been granted) under Section 172 of the Town and Country Planning Act 1990.

**Comparison with Surrey Local Planning Authorities**

Comparison with Surrey Local Planning Authorities – year ending December 2018

<b>Local Planning Authority</b>	<b>% delegated</b>
Elmbridge*	92
Epsom & Ewell	97
Guildford	97
Mole Valley	92
Reigate & Banstead	91
Runnymede	90
Spelthorne	96
Surrey Heath	95
Tandridge	96
Waverley	92
Woking	90
English average	94

Source: Table 134 – Government Statistics

\*In July 2019, Councillors at Elmbridge approved changes to their scheme of delegation to allow non-major applications to be determined by officers thus increasing their delegated authority so the % of delegated decisions will now be higher.

## **Development Manager – Scheme of Delegation**

**Proposed Scheme of Delegation**

1. All functions relating to Town and Country Planning and Development Control as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) (including, for the avoidance of doubt, functions relating to the preservation of trees) except for (i) the functions listed in paragraph 5 below and (ii) the following functions which will be reported to the Planning Committee for determination:

- a) Applications for planning permission, where the recommendation would be for approval, involving:-
  - (i) The provision of dwelling houses where the number of dwelling houses to be provided is more than five; or
  - (ii) 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
  - (iii) Development carried out on a site having an area of 1 hectare or more.

For the avoidance of doubt, the Development Manager is authorised to refuse such applications.

- b) Applications submitted by a member of staff
- c) Applications submitted by a Councillor
- d) Applications where the applicant is Woking Borough Council, except for non material amendments and minor material amendments (irrespective of whether they are major or non major development)
- e) Any undetermined application can be requested by a Councillor for determination by the Planning Committee provided a planning reason is supplied in writing to the Development Manager
- f) Where ENFORCEMENT/STOP NOTICES are recommended to be served (except in cases of urgency, where the Development Manager is authorised to approve the issue of such Notices)
- g) Where objections have been received on the confirmation of a tree preservation order (TPO)
- h) Where in the opinion of the Development Manager planning issues raised warrant the consideration by the Planning Committee

2. **Protection and Preservation of Trees and Hedgerows**

To determine notifications for intended hedgerow removal; to approve or refuse consent, as appropriate, within the prescribed six week period; to issue or withdraw hedgerow retention notices in respect of hedgerows classified as “important” within the statutory criteria; to issue hedgerow replacement notices in appropriate cases; to take all necessary steps in connection with appeals.

3. **High Hedges**

To determine applications of complaint over high hedges under the Anti-Social Behaviour Act 2003.

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### **4. Historic Building Repair and Community Projects Grants**

To approve grants in accordance with the agreed criteria, in consultation with the Chairman and the appropriate Ward Councillors

### **5. Functions delegated to the Director of Legal and Democratic Services under the Council's May 2016 Scheme of Delegation in respect of Planning Enforcement (*Note:- these functions primarily relate to the taking of legal action through the Courts*).**