

# Council



Report of Head of legal and democratic

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To: COUNCIL

DATE: 8 October 2020

# Review of planning application call-in and trigger arrangements for decision making

## Recommendations

That Council

(a) decides whether to make permanent the temporary change in town or parish trigger arrangements agreed by the chief executive under emergency powers on 18 May 2020 (trigger for major applications but no trigger for minor applications as described in paragraph 7 of this report) or to revert to allowing parish council trigger for both major and minor applications (as described in paragraph 7 of this report), with effect from the date of this meeting;

(b) agrees to make permanent the wording of the ward councillor call-in arrangements agreed by Council on 16 July 2020 (pending this review) as set out in paragraph 25 of this report, with effect from the date of this meeting, subject to deletion of the words “(unless an extension to the consultation period has been granted)” if the deletion is agreed by Council as part of the Constitution review item on the agenda for this meeting;

(c) agrees to make permanent the change that prior approvals and notifications are no longer referred to the planning committee, with effect from the date of this meeting;

(d) authorises the head of legal and democratic to make the necessary changes to the Constitution and to make any minor or consequential amendments to the Constitution and the rules for consistency and to reflect the council’s style guide.

## Purpose of Report

1. The purpose of this report is to ask Council to consider three aspects of the scheme of delegation to the head of planning.

## Strategic Objectives

2. The Constitution underpins all of the council’s areas of activities and, therefore, contributes to the achievement of all its strategic objectives and reflects the council’s duty to respond to the Covid-19 pandemic to deliver its statutory functions.

## Background

3. On 18 May 2020 the chief executive, under emergency powers, agreed temporary changes to the delegations to the head of planning to allow alternative arrangements for the determination of applications that would ordinarily be determined by the council’s planning committee. The views of all

group leaders were sought by Democratic Services on 15 May 2020 after the views of the Leader and Cabinet Member for Planning had been informally sought.

4. These changes were brought in as a response to the challenges presented by the pandemic to reduce the number of applications referred to committee whilst strengthening the links between council planning officers, ward councillors and town and parish councils. It was agreed that the temporary changes would be reviewed after six months but at its meeting on 16 July 2020 Council asked for them to be reviewed at its October meeting.
5. At the time this decision was taken, the government's Chief Planner and MHCLG both emphasised the importance of keeping the planning system moving, so it could play its part in supporting the economic recovery. They suggested prioritising decision making, taking an innovative approach using all options available including the use of technology to continue the service and ensuring discussions and consultations could go ahead. MHCLG advised "The government would also encourage local planning authorities to consider delegating committee decisions where appropriate."
6. The chief executive agreed several changes to the constitution which allowed increased delegation to the head of planning.
7. In respect of the determination of planning applications, minor applications (e.g. 1-9 new houses) would no longer automatically be triggered and referred to the planning committee where the officer's recommendation for approval/consent was in direct conflict with the clear and unambiguous views of the town or parish council. However, for all major applications (e.g. 10 houses plus) there was no change and if there is a town or parish council objection on an application where the officer recommends approval the application continues to go to the planning committee. There would continue to be a mechanism for the local ward councillor to call in applications to the planning committee, based on material planning reasons.
8. An application would continue to be referred to the planning committee where the ward councillor (to include adjacent ward councillor whose parish has been consulted) calls in the application to be considered by the planning committee within 28 days of the date of registration of the application (unless an extension to the consultation period has been granted) and the request is agreed by the Head of Planning. This request must be in writing and refer to material planning matters to ensure the audit trail for making that decision is clear and unambiguous. Councillors' right of call-in does not apply to applications for certificates of lawful use or development, prior approvals and notifications.
9. The above power is to be exercised in consultation with the Chair and Vice-Chair of the Planning Committee and relevant ward councillor(s) (to include adjacent ward councillor(s) whose parish has been consulted).
10. The chief executive agreed alternative arrangements for the determination of applications in respect of prior approvals or notifications. Prior approvals and notifications are no longer referred to the planning committee. These have strict time limits and it is often the case that the relevant works/development are effectively permitted if the council does not respond within the set timeframe.

11. At its meeting on 16 July 2020, Council adopted revised Virtual Meeting Procedure Rules which reinstated public participation at virtual formal council meetings, to apply from the date of that meeting.
12. Council also agreed that a further report on the operation of call-in and trigger procedures relating to planning matters would be brought to Council no later than the end of October 2020, with the aim of introducing a revised long term scheme of delegation regarding call in and triggers at that time, or as soon as possible thereafter.
13. A motion on parish trigger arrangements was deferred for consideration at this meeting but all the outstanding issues from the July Council meeting have been incorporated into this report for ease of fresh consideration and debate at the October Council meeting as requested by Council in July.

## **Operation of the temporary arrangements**

### **Parish council trigger arrangements**

14. Following the introduction of the changes to the parish council trigger arrangements, officers, ward councillors, the Cabinet member for Planning and the Oxfordshire Association of Local Councils received a number of representations from town and parish councils who were against the changes and felt that they were undemocratic.
15. Balanced against this, the head of planning has assessed the impact of the changes on decision-making. There are currently a total of 70 applications that are potential Planning Committee items and will need to be scheduled for a meeting. These comprise a mixture of ward councillor call-ins (18 applications, 11 of which are in Henley), conflict with the views of the town or parish council (triggers) (49 applications) and three applications at the discretion of the Planning development manager.
16. Since the decision of 18 May 2020, only one delegated planning decision has been made under the new arrangements. Officers have not used the emergency powers as envisaged due to the tension and disquiet expressed by town and parish councils following this decision.
17. As part of the new arrangements, officers have attempted to increase engagement with town and parish councils and ward councillors and explain the application proposals and seek a refresh of the town or parish view, copying in ward councillors. This has resulted in some successes, but on the whole the majority of town and parish councils have reaffirmed their objections, contrary to officer recommendation, and expressed disappointment to officers that their democratic views are being challenged.
18. Little support has been received from ward councillors and officers are now seeing more call-ins than before the changes were made. Referring applications to the Chairman, Vice-Chairman and Ward Councillor hasn't worked as envisaged because of the lack of consensus between parties, leaving the head of planning exposed to political tensions. The head of planning has therefore been cautious, and to date no councillor call-in has been rejected.

19. It is worth noting, of those applications triggered by the town or parish council to be considered by the planning committee, the majority were determined in accordance with the officer's recommendation.
20. Although many towns and parishes have expressed a view that the trigger and determination process at the planning committee represents a democratic judgement, this view fundamentally misunderstands how the planning system works, as the planning committee is not offering political interpretation or political determination but is required to apply planning policy in accordance with planning law as a regulatory committee.
21. With the current backlog of 70 applications expected to be determined by the planning committee, based on the current average of four applications per committee meeting, officers will need 18 meetings to deal with the backlog, potentially three planning committees a month for at least the next six months. We also have new applications (parish triggers/councillor call-ins) adding to the committee case work.
22. Going back to the old scheme will mean many more planning committee meetings with their associated costs. With the slow progress on planning committee decisions applicants and agents are getting frustrated, which means we have a high risk of planning appeals for non-determination, where the decision is taken away from the elected councillors. We already have a high number of planning appeals. This will have an impact on our performance as a council under the housing delivery test, which is measured by Government and can trigger Special Measures (government intervention). This has happened elsewhere in the country.
23. Council is asked to decide whether to make permanent or extend the temporary change in town and parish council trigger arrangements agreed by the chief executive under emergency powers on 18 May 2020 (no trigger for minor applications as described in paragraph 7 of this report) or to revert to allowing town and parish councils to trigger major and minor applications (as described in paragraph 7 of this report), with effect from the date of this meeting.

#### **Ward councillor call-in arrangements**

24. In operating the scheme between May and July, it became apparent that the wording of the head of planning's delegation 1.1 a ii was unclear as to who makes the final decision on the referral by a ward councillor of a planning application to the planning committee. In line with other delegations to the head of planning it is the intention that he determine this in consultation with the chair/vice-chair and local ward councillor(s).
25. At its meeting on 16 July 2020, Council agreed corrected wording for the head of planning's delegation 1.1 a ii in the council's constitution to clarify call-in of planning applications by ward councillors, to apply from the date of the meeting until a review by full council of their operation, to be undertaken no later than the end of October 2020. This report asks Council to review the operation of ward councillor call-in afresh and recommends Council to continue with the wording of the head of planning's delegation agreed by Council in July, namely:

- A ward councillor (to include adjacent ward councillor whose parish has been consulted) calls in the application to be considered by the Planning Committee within 28 days of the date of registration of the application (unless an extension to the consultation period has been granted) and the request is agreed by the Head of Planning . This request must be in writing and refer to material planning matters to ensure the audit trail for making that decision is clear and unambiguous. Councillors' right of call-in does not apply to applications for certificates of lawful use or development, prior approvals and notifications.
- This delegation must be exercised in consultation with the Chair and Vice-Chair of the Planning Committee and relevant ward councillor(s) (to include adjacent ward councillor(s) whose parish has been consulted).

26. A separate report on this agenda on the Constitution review recommends deletion of the words “(unless an extension to the consultation period has been granted)” as they have proved ambiguous. The recommendation in this report to make permanent the above wording is therefore subject to the deletion of those words if Council agrees to do so as part of the Constitution review.

### **Prior approvals and notifications**

27. Prior approvals and notifications are no longer referred to the planning committee. These have strict time limits and it is often the case that the relevant works/development are effectively permitted if the council does not respond within the set timeframe. No issues have arisen in relation to this change since it was introduced in May 2020. Council is recommended to agree that this change should become permanent.

### **Financial Implications**

28. There are no immediate direct financial implications arising from this report. However, the number of applications referred to the planning committee has a direct impact on planning and democratic services staffing resources and may lead to requests for additional resources if current volumes continue.

### **Legal implications**

29. The chief executive acting under his emergency powers and Council in July 2020 agreed temporary changes to the scheme of delegation to the head of planning and Council is asked whether to make these permanent.

30. The delegation on ward councillor call-ins needs to be to the head of planning in consultation with relevant councillors as decision-making powers cannot be granted to the chair or vice-chair of the planning committee or ward councillors.

### **Risks**

31. The council needs to have efficient and effective arrangements and delegations in place to ensure timely determination of planning applications. Failure to do so could attract intervention by the Secretary of State for Communities and Local Government who refused to grant a request for a temporary relaxation of statutory targets and the five year land supply requirement to avoid a return to

speculative development across the district. Council must balance this need against the desire expressed by a number of town and parish councils and some ward councillors to have an automatic right to trigger or call applications into the planning committee and the need for transparency and democratic process.

### **Other Implications**

32. The council will continue to face additional pressures arising from its response to Covid-19 in the coming months which may in turn impact on the ongoing delivery of its day to day services.

### **Conclusion**

33. Council is therefore asked to decide on three distinct issues:

- trigger of planning applications to the planning committee by town and parish councils
- call-in of planning applications into the planning committee by ward councillors
- prior approvals and notifications no longer being referred to the planning committee

### **Background Papers**

- Decision taken by the chief executive under emergency powers dated 18 May 2020
- Decisions of Council on 16 July 2020 (Minutes 88 and 91 (Motion D))