

Council



Report of Head of legal and democratic

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To: COUNCIL

DATE: 15 July 2021

Review of planning application town and parish trigger arrangements for decision making

Recommendations

That Council

(a) makes permanent the temporary change in town and parish trigger arrangements (trigger for major applications but no trigger for minor applications as described in paragraph 7 of this report), with effect from the date of this meeting;

(b) 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 review the town and parish trigger arrangements in the scheme of delegation to the head of planning.

Strategic Objectives

2. The Constitution underpins all of the council's functions but clear planning procedures contribute to the corporate plan theme of openness and accountability.

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 temporary changes to the constitution which allowed increased delegation to the head of planning, including changes to the town and parish trigger arrangements which are the subject of this report.
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. Council 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.

9. At its meeting on 8 October 2020, Council reviewed the temporary arrangements and resolved to:

1. agree, with effect from the date of this meeting, to extend the temporary change in town or parish trigger arrangements agreed by the chief executive under emergency powers on 18 May 2020 so that minor applications (e.g. 1-9 new houses) continue not to be automatically triggered and referred to the Planning Committee where the officer's recommendation for approval/consent is in direct conflict with the clear and unambiguous views of the town or parish council;

2. agree to further review the operation of these town or parish trigger arrangements at a Council meeting by no later than 31 July 2021; these trigger arrangements will automatically lapse unless full Council votes to renew them at the review;

Council also authorised 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.

10. In moving the motion at the October Council meeting, Councillor Anne-Marie Simpson stated that there was an increasing number of planning applications waiting to be considered by the planning committee and therefore the temporary change in town and parish trigger arrangements needed to continue to help reduce a building backlog of applications waiting for a committee decision. The motion sought to simplify the ward councillor call-in arrangements with the removal of the previous consultation arrangements with the head of planning and chair and vice chair of the planning committee. Ward councillors would now have an automatic right to refer an application to the planning committee thus recognising the local community leadership role of ward councillors.

11. Some councillors expressed the view that it was important to restore the local democratic right of parish/town councils to have such applications considered by the planning committee. However, the majority of councillors supported the view that going back to the old scheme at that time would mean more planning committee meetings with their associated costs and with slow progress on committee decisions there was an increased risk of planning appeals for non-determination. The motion provided for the call in of applications to the committee by ward councillors who should liaise with their parish/town councils in respect of any concerns they have with particular applications.

Operation of the temporary arrangements

Parish and town trigger arrangements

12. Following the introduction and temporary retention of the changes to the parish council trigger arrangements in May and July 2020, 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.

13. Balanced against this, the head of planning has assessed the impact of the changes on decision-making. Whilst the current temporary arrangements have kept the number of applications being referred to the Planning Committee to a more manageable level there are still a comparatively high number of applications (as at June) waiting to be scheduled for a meeting. These 34 applications comprise a mixture of ward councillor call-ins (20 applications), conflict with the views of the town or parish on major applications (9 applications) and 5 applications referred at the discretion of the planning development manager.

14. Since the decision of 8 October 2020:

- 54 applications have been considered over 14 Planning Committee meetings
- Of the 54 applications that have been determined by the Committee since 8 October 2020, 12 were overturns (11 refusals and one approval). 78% of the decisions made were in accordance with the officer's recommendation.
- 45 delegated planning decisions have been made under the new arrangements which would have otherwise been referred to the Planning Committee.
- Had the 45 delegated decisions been reported to the Planning Committee, this would have resulted in an estimated 11 additional Planning Committee meetings over nine months (since October 2020), equivalent to a 78% increase of meetings over that period.

15. As part of the new temporary arrangements, officers have increased the level of engagement with town and parish councils and ward councillors, explaining the application proposals and their assessment, copying in ward councillors. In the main this has been a positive experience by town and parish councils and resulted in some revised views, but many tended to reaffirm their objections, contrary to officer recommendation. A few parishes continue to express disappointment to officers that their democratic views are being challenged.

16. Officers have seen more ward councillor call-ins than before the changes were made, as town and parish councils ask their ward councillor to refer the application to committee which would have automatically been referred under the previous system.

17. It is worth noting, of those 54 applications referred to the Planning Committee since October 2020, 83% (45) had a town or parish council objection, however, 78% of the applications were determined in accordance with the officer's recommendation for approval.

18. 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, administered by the council, 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.
19. Even with the current temporary arrangement we have 34 applications (as at June) that will need to be referred to the planning committee. Based on the current average of four applications per committee meeting, officers will need at least eight meetings to deal with the current workload, potentially needing two planning committees a month for at least the next three months. We also have new applications (town and parish objections to major applications/councillor call-ins) consistently adding to the committee case work.
20. If we return to the previous scheme of delegation where both major and minor applications can be triggered by a town or parish objection, (based on our workload since Oct 2020) we estimate that this would add around five applications a month to those needing to be scheduled for a planning committee meeting. In turn that would require an additional planning committee meeting a month (totalling three planning committee meetings per month) with their associated costs, resource implications to service the meetings and slowing down of the decision making process. Officers believe applicants and agents will get more frustrated, meaning we would have a higher risk of planning appeals for non-determination, where the decision is taken away from the elected councillors. We already have a comparatively high number of planning appeals. This would 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) which we have seen happen elsewhere in the country.
21. Council is recommended to make permanent the temporary change in town and parish council trigger arrangements agreed by the chief executive under emergency powers on 18 May 2020 and extended by Council on 8 October 2020 (i.e. no trigger for minor applications as described in paragraph 7 of this report) with effect from the date of this meeting.

Financial Implications

22. 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 additional volumes arise.

Legal implications

23. The chief executive acting under his emergency powers and Council in July and October 2020 agreed temporary changes to the scheme of delegation to the head of planning and Council is recommended to make these permanent. It should be noted that these trigger arrangements will automatically lapse after this meeting unless Council votes to renew them (by further extension or on a permanent basis) at this review.

Risks

24. 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 to have an automatic right to trigger or call applications into the planning committee and the need for transparency and democratic process.

Climate and Ecological Emergencies Implications

25. Key climate policies including DES 10 relate to all new build residential developments and will therefore cover minor applications. It is therefore expected that such planning decisions will ensure that climate policies are implemented. Increased engagement with town and parish councils will give an opportunity for planning officers to communicate how new climate policies have influenced decisions. Efficient determination of planning applications will facilitate the delivery of any climate and ecological benefits that may arise from permissions granted.

Conclusion

26. Council is recommended to make permanent the current temporary town and parish trigger arrangements (trigger for major applications but no trigger for minor applications as described in paragraph 7 of this report), with effect from the date of this meeting and to authorise the head of legal and democratic to make the necessary changes to the Constitution.

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))
- Decision of Council on 8 October 2020 (Minute 104)