

Wiltshire Council

Cabinet

19 October 2010

Subject: **The Wiltshire Council Member and Parish, Town & City Council Review of the Development Control Service of Wiltshire Council following nine months of operation**

Cabinet member: **Councillor John Brady**
 Economic Development, Planning & Housing

Key Decision: **No**

Executive summary

In early 2009 it was decided that a review should be undertaken of the way Wiltshire Council's newly created Development Control had operated in its first nine months/year.

This report contains the recommendations generated by that review. Views were sought from all Division Members and Parish, Town and City Councils. Officer views were also sought and the report's appendices set out the feedback received and its analysis. The analysis led to a number of recommendations covering:

- (a) The Scheme of Delegation to Officers; (**Appendix A**)
- (b) The Planning Code of Good Practice; (**Appendix B**)
- (c) Training; (**Appendix C**)
- (d) Communication; (**Appendix D**)
- (e) What is, and is not working well; (**Appendix E**)
- (f) General comments/concerns/suggestions about the service. (**Appendix F**)

These recommendations were then considered by the Cabinet member for Economic Development, Planning and Housing and chairmen and vice chairmen of the Area and Strategic planning committees. As a consequence, a number of amendments were made. The revised recommendations were then considered by the Focus Group on the Review of the Constitution (Focus Group) which recommended that a number of further constructive amendments/clarifications be made. With one exception these have all been taken on board in the recommendations to Cabinet set out in the final version of the report.

Proposals

- (i) That Cabinet endorse the recommendations as detailed at paragraph 22 of this report.
- (ii) That Council be recommended to approve the consequential changes to the constitution.

Reason for proposals

The recommendations result from a careful and reasoned analysis of the consultation responses and subsequent input from Wiltshire Council members and if agreed, should improve the way the Development Control Service operates, its customer focus and its performance.

The Scheme of Delegation and the Planning Code of Good Practice (Protocol) form part of the Constitution and changes to them need Council approval.

MARK BODEN

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Wiltshire Council

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Key Decision: **No**

Purpose of Report

1. To seek Cabinet's agreement for changes to the manner in which Wiltshire Council's Development Control Service operates following a review of the service.

Background

2. In the lead up to the creation of the new Wiltshire Council a detailed review of the development control service was jointly undertaken by members of the former districts and county council. The objective was to produce a set of working procedures and protocols which could be used by officers and members following the creation of the new council in April 2009.
3. At that time, every effort was made to build on 'best practice' and the final operating guidelines incorporated elements from all of the former councils. Members were very conscious, however, that what they were putting into place was something which would need to be reviewed and then endorsed by the elected members of the new council. It was therefore agreed that it made eminent sense for the way the service operates to be reviewed by members and the parish, town and city councils after eight or nine months.
4. The Members of Wiltshire Council and all parish, town and city councils were canvassed between November 2009 and February 2010 and views sought on:
 - (a) The Scheme of Delegation to Officers; (**Appendix A**)
 - (b) The Planning Code of Good Practice; (**Appendix B**)
 - (c) Training; (**Appendix C**)
 - (d) Communication; (**Appendix D**)
 - (e) What is, and is not working well; (**Appendix E**)
 - (f) General comments/concerns/suggestions about the service. (**Appendix F**)
5. This report captures the feedback received in table form and provides an officer commentary on the merits of the suggestions and a recommendation as to

whether or not the manner in which the service is being operated should be changed in the light of the comments made.

6. Officers from the Legal & Democratic Service have also contributed their thoughts on changes which they consider appropriate in the light of experience and these have also been captured.
7. The purpose of this review has been to establish what Division Members and parish and town councils think of the Development Control Service and the way it has operated since April 2009. While they are not the only stakeholders in the service, they have almost daily contact with the service and are consulted on applications with great regularity. The recommendations set out in this report flow from the feedback from these groups.
8. There is, however, a further and almost certainly larger piece of work to be undertaken in respect of additional stakeholders; internal and statutory consultees, applicants, agents and neighbours, etc. Much of this work is already in hand through the ongoing Lean review of the service which has been examining customer focus from a service **user's** point of view and this has been taking place in parallel with the work on this report. There is also ongoing and continuous consultation work with applicants and agents in hand to augment the Lean review and to help continually improve service delivery. The outcomes of this additional work/consultation will inevitably result in further changes to the way the service evolves. Because of the scale and ongoing nature of this additional work, it is simply impractical to combine the outcomes within a reasonable timeframe with the discreet and focussed piece of work which forms this review. (Members will appreciate the scale of this task once they have read the appendices attached which contain feedback from only members and parish and town councils.)
9. Members should be reassured however, that this work is taking place and the feedback will be actioned. In the event that this necessitates a fundamental change in the manner in which the service operates this will be brought to Members'/Cabinet's attention by way of a further report.
10. An earlier version of this report was considered at a meeting of the Chairmen and Vice Chairmen of the four Area Planning Committees and the Strategic Planning Committee, chaired by Councillor Brady (Cabinet Member). The views expressed by Members at this meeting have been incorporated into the report/recommendations now before Cabinet. The recommendations have also been considered by the Focus Group and their helpful and constructive requests for amendments have also been taken on board with one exception.

Main Considerations for the Council

11. Whether to:
 - (i) Agree with, and support the officer analysis of the feedback and the recommendations contained in this report;
 - (ii) Amend the recommendations for change;
 - (iii) Table additional recommendations.

Environmental Impact of the Proposal

12. Major operational changes in the way the Development Service is delivered could have an environmental impact but the council still has to operate the service under the umbrella of national guidelines and policy which would not be affected by any decisions made on this report.

Equalities Impact of the Proposal

13. There are none stemming from the officer recommendations contained in the report.

Risk Assessment

14. There are no recommendations in the report which expose the council to any risks, over and above those any council is exposed to when operating a regulatory planning service.

Financial Implications

15. In the main, the financial implications of the recommendations in this report stem from the officer time and resources required to implement the variety of proposed procedural changes. The principal changes will be improvements to consultation methods and revising and improving documentation for consultees. The proposed changes to the Scheme of Delegation to Officers allowing additional categories of application to be 'called in' by Members will also have some limited resource implications.
16. Members should note, however, that some of the suggestions for change which have not been recommended have extensive resource implications, in particular allowing 'call in' by parish and town councils and a certain number of letters of objection triggering committee consideration. Wherever possible the impact of any proposal has been set out in the appendices to allow informed decisions to be reached.
17. The resources required to action the recommendations can be provided within existing budgets and there will be no call for additional funding.

Legal Implications

18. None.

The Analysis

19. For ease of reference all of the comments which have been received have been set out in table form in the appendices attached to this report. Most tables comprise the suggestion/comment received, an officer commentary, some brief details on the possible resource impact of any change and a recommendation.

20. The following two sections, a) and b) capture the changes which require Cabinet approval and which officers consider to be practical, appropriate and sustainable, along with a recommendation that they be endorsed. Section c) simply captures the identified training needs.
21. If agreed by Cabinet, and following consultation with the Standards Committee, Full Council will be asked to approve the recommendations to incorporate the changes into the constitution. This procedure is required by Article 16.3 of the constitution.

Recommendation

22. Having considered the suggestions for changes and the impact on service delivery/resources officers recommend that the actions contained under a) and b) below be endorsed by Cabinet. Members should note that to avoid repetition in this report, a recommendation for any given course of action only appears once below, even if it appears in more than one of the appendices. The recommendations arising from d) 'communications', e) 'what is and is not working well' and f), 'general comments', have been captured in **Appendix J**. These recommendations are in the main 'operational' or minor in nature and some of those that are for clarification only are already in the process of being actioned).

a) The Scheme of Delegation to Officers

It is recommended that the following takes place:

1. Amend the Scheme of Delegation specific to planning (Part 3C) to Officers to expand the types of application which can be called in by Members to include Listed Building & Conservation Area Consents and Advertisements.
2. Re-write and simplify guidance on Member call in procedure for planning applications and ensure officers confirm what action they are taking.
3. Retain current practice of Division Member only call in unless the Chairman has discussed the application with Members who may have conflicting views, and then decides to call the application in.

*(The Focus Group wanted clarification on what happens when the Chairman is the Division Member and for this to be set out clearly in the Code of Good Practice – it now has been included in para 9.3 of the revised version of the Code, **Appendix I**)*

4. Amend the Scheme of Delegation specific to planning (Part 3C) to Officers to confirm that the Director of the Service has delegated power to make changes to conditions approved at committee provided this is in line with the principles of the committee's decision. (Examples would be where there are clear errors/typos in conditions, to reflect changes in circumstances between a meeting and issue of a decision or a need to add to a condition or reword a condition to ensure that it complies with policies and legal guidance. Any changes to be reported back to a subsequent meeting for Members to note.)

5. Amend the Scheme of Delegation to include determining the requirements for and amending when necessary the local validation list for planning applications.
6. Remove any ambiguity about what constitutes a 'senior officer' (private applications submitted by them will have to go to Committee if objections are received) by defining this in the scheme as follows:

A 'senior officer' within the Development Service will mean a Team Leader, Area Development Manager or the Service Director. In respect of other council services, a 'senior officer' will mean any Service Director, Corporate Director or the Chief Executive.

*(The Focus Group discussed this proposal and some members considered that if **any** planning officer submitted an application in a private capacity it should automatically be referred to committee. Officers believe that limiting referral to senior officers as originally defined is an appropriate probity safeguard and have not changed the recommendation.)*

7. Revise the Scheme of Delegation to clarify that applications submitted on **behalf** of the council by senior officers will not be treated differently from other applications. (Council applications submitted by senior officers will be treated in exactly the same manner as applications submitted by the public. Objections will not automatically trigger committee consideration.)
8. Amend the Scheme of Delegation to include the 'discharge' of conditions.
9. Amend the Scheme of Delegation to clarify that similar considerations apply to both the council's own Regulation 3 applications and the public's in respect of triggering consideration by the Strategic Planning Committee.
10. Where an appeal has been lodged against a planning decision and Counsel advises that specific refusal reasons are unreasonable and/or likely to undermine or weaken the Council's case or that there is a substantial risk of costs being awarded against the Council, officers be authorised to inform the appellant and the Planning Inspectorate that the Council will not seek to defend such reason(s) at appeal.

*(The Focus Group suggested that the matter be brought back to Committee if time permits and if not, the decision should be taken in consultation with the Chairman. This suggestion has now been incorporated into the revised version of the Scheme of Delegation, **Appendix H**)*

Councillor Bill Douglas has tabled a number of proposed changes to the Scheme of Delegation to Officers in the form of a revised scheme which has been attached as **Appendix G**. Officer comments on the proposals are incorporated into that document.

(For ease of reference all of the changes to the Scheme which are recommended by officers have been incorporated into the revised scheme attached in the form of **Appendix H.**)

b) The Planning Code of Good Practice

It is recommended that the following takes place:

1. Amend the Planning Code of Good Practice so that it states that Division Members can nominate a substitute to undertake their planning duties, including 'call in' when they have a conflict of interest and are absent due to holidays or illness.

*(The Focus Group wanted this ability to nominate captured in the Scheme of Delegation rather than just in the Code of Good Practice. This has been inserted as part b. of the revised Scheme, **Appendix H**)*

2. That the order of events at committee meetings be amended to the following:
 - a) The planning officer will introduce each item and set out any representations, amended plans or material considerations which have been received or come to light in the period between the publication of the agenda and the committee meeting.
 - b) Committee Members will then ask the officer to clarify any points/ask technical questions.
 - c) Members of the public who wish to make representations opposing the application will then be invited to do so.
 - d) Members of the public/applicant/agent (in this order) who wish to make representations in support the application will then be invited to do so.
 - e) Consultees who wish to make representations will be invited to do so.
 - f) The town/city or parish council representative, if present, will then be invited to make representations.
 - g) The division member will be invited to make representations*.
 - h) The planning officer will then have an opportunity to respond to comments or provide clarification of any points raised.
 - i) The chairman will then normally ask if anyone is prepared to move the officer recommendation, or table an alternative or move that the application be discussed. Once a motion has been seconded it will be open to the councillors to discuss the application and ask further questions of officers.
 - j) If necessary the chairman will then again ask if anyone is prepared to move the officer recommendation, or table an alternative.

* Any division member, be they a member of the committee or not is welcome to attend committee meetings and make representations on any application

within their division. Councillors who are part of the committee will have voting rights but those who are not can speak, but are not eligible to vote. Division members who are not on the committee may be invited to participate in any debate on an application in their division at the chairman's discretion.

*(The Focus Group wanted the wording of section i) to be more precise and questioned the need for section j). Following discussions with Legal officers it is now **recommended** that section i) should read as follows and j) should be deleted:*

Revised i) The chairman will then normally ask if anyone is prepared to move the officer recommendation or propose an alternative motion. Once a motion has been seconded it will be open to the councillors to discuss the application and ask further questions of officers.)

3. Cabinet consider introducing mileage payments (or an allowance) for planning committee members who undertake individual pre-meeting site inspections. Any claims to be annotated with the relevant application number(s). (This was discussed at the chairmen's meeting where there was no consensus. The chairmen asked that this matter be considered and decided upon by Cabinet. The Focus Group took a similar approach.)

(Note: The issue whether such site visits should be regarded as an approved duty was specifically considered by the Independent Remuneration Panel (IRP) during the last review of members' allowances. The IRP's conclusion was that they should not be included on the basis that the current scheme already provides for allowances to be claimed for site visits approved by a committee or chief officer. It does not cover ad hoc site visits carried out by an individual member without proper authorisation.

Members' allowances can only be agreed by the Council and then only in conjunction with a report from an IRP. The Cabinet therefore has no power to introduce mileage payments. The only remedy available is to request the Council to call for a review of this matter by an IRP either as a separate piece of commissioned work or as part of the next review of the Members' Allowance Scheme in 2013)

4. Amend the Code to clarify that parish/town/city councils have an individual slot to make representations at committee. Only one representative per council (representing the council's views, rather than their own individual thoughts) will be allowed to speak. Where an application site covers more than one parish, one representative from each of the affected parishes may speak.
5. Add a section to the Code of Good Practice explaining that in certain circumstances, Members could be expected to act as the council's witness. Alternatively, consultants can be engaged to defend the appeal where a Member is unavailable.

(The Focus Group supported the view that Members who overturn

*recommendations should be prepared to support that decision if appeals are lodged. This has been picked up in the final paragraph of section 9.7 of the revised Code, **Appendix I**)*

c) Training

The majority of comments on training were received from parish and town councils and were both extremely positive and supportive, expressing an appetite for more and regular training sessions on the following subjects.

- Planning appeals
- Conservation & listed buildings (including the reasoning behind officer recommendations)
- All aspects of the planning process
- Changes when they occur to policy/regulations
- The role of the Development Service, responsibilities and procedures
- Material planning considerations
- The legal framework of planning legislation
- Enforcement (using actual examples)
- Permitted development (what does, and does not need planning permission)
- Areas of minimum change
- How to respond to planning applications
- A 'general' topic training session
- Training delivered by independent trainers
- Development plans
- The relationship between listed building consent and planning permission
- Planning enforcement.

Officers are now taking steps to deliver a series of training sessions, (open to both Division Members and parish and town councils), at appropriate venues across the county covering as many of these subjects as possible. The sessions will be repeated and updated where necessary.

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The following unpublished documents have been relied on in the preparation of this Report:

Paper and electronic feedback from Members and parish and town councils on the consultation.

Appendices:

- A. The Scheme of Delegation to Officers;
- B. The Planning Code of Good Practice;
- C. Training;
- D. Communication;
- E. What is, and is not working well;
- F. General comments/concerns/suggestions about the Service;
- G. Proposed amendments to the Scheme of Delegation to Officers from Councillor Bill Douglas;
- H. Revised Scheme of Delegation to Officers incorporating officer recommendations for change;
- I. Revised Planning Code of Good Practice incorporating officer recommendations for change.
- J. Recommendations from the report which do not require Cabinet approval and which are being actioned by officers.