

Wiltshire Council

Cabinet

24 May 2011

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

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

Key Decision: No

Executive summary

On 19 October 2010 Cabinet considered a report containing recommendations for changes to the way the Development Control Service operates. The recommendations had been generated by a review of the service carried out in 2009/10. The report covered a variety of operational matters including 'The Scheme of Delegation to Officers' and 'The Planning Code of Good Practice'.

Cabinet discussed the report at the meeting where a decision was made to defer consideration to allow: -

- a) a number of suggested changes to be incorporated
- b) a separate Member meeting to take place to consider the 21 day call in rule
- c) any necessary changes to be incorporated which flowed from the then imminent publication of the Localism Bill.

In addition to the original recommendations, the current version of the report incorporates the changes requested by Cabinet and the recommendations of the Members who met to discuss the 21 day rule. The Localism Bill contained nothing which impacted on the way the service is delivered (although this may change with the publication of future consequential legislation). It also includes a revised version of the Scheme of Delegation to Officers reflecting suggestions derived from the review, changes in legislation and addressing a number of ambiguities and gaps in the scheme which have been identified since 2009.

Proposals

- (a) That Cabinet endorse the recommendations as detailed at paragraph 48 of this report.
- (b) That Council be recommended to approve the following:
 - the revised Scheme of Delegation for Development Control (Appendix 1)

- the revised Planning Code of Good Practice for Members of Wiltshire Council (Appendix 2)
- That the function of revising and or setting planning fees be delegated to the Strategic Planning Committee

and that the Constitution be amended accordingly.

Reason for proposals

The recommendations result from a careful and reasoned analysis of the consultation responses and subsequent input from Wiltshire Council members and officers 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
Corporate Director, Neighbourhood & Planning

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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
 - (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.
5. Officers from the Legal & Democratic and Development Services also contributed their thoughts on appropriate changes and these were also captured. All of the feedback received was then carefully analysed and recommendations formulated.

6. The proposed recommendations were then reviewed by the Cabinet member for Neighbourhood & Planning along with the chairmen and vice chairmen of the Area and Strategic planning committees and the Focus Group on the Review of the Constitution. The changes they then proposed were incorporated into the Cabinet report.
7. Cabinet then discussed that report at its meeting on 19 October 2010 at which time a decision was made to defer consideration to: a) allow a number of suggested Cabinet changes to be incorporated, b) to allow a separate meeting to take place to consider the 21 day call in rule and c) to allow any necessary changes to be incorporated which flowed from the then imminent publication of the Localism Bill.
8. This current version of the report now incorporates Cabinet's suggestions, Member's suggested changes to the 21 day rule and comments on the implications of the Localism Bill. It also includes a revised version of the Scheme of Delegation to Officers reflecting suggestions derived from the review, changes in legislation and also addressing ambiguities and gaps in the scheme which have been identified by planning and legal officers since 2009.

Main Considerations for the Council

9. Whether to:
 - (i) Agree with the recommendations contained in this report;
 - (ii) Amend the recommendations for change;
 - (iii) Table additional recommendations.

Environmental Impact of the Proposal

10. 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

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

Risk Assessment

12. 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

13. 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 and 'relaxing' the 21 day call in period will also have some limited resource implications.

14. The resources required to action the recommendations can be provided within existing budgets and there will be no call for additional funding.

Legal Implications

15. As contained within this report.

The Analysis and Subsequent Cabinet Suggestions

16. The detailed analysis of the feedback from the review and all recommendations were set out fully as part of the earlier October 2010 Cabinet report. The current report does not repeat this background work and focuses on the actual recommendations, the changes requested by Cabinet in October, the implications of the Localism Bill and additional revisions to update the Scheme of Delegation to Officers which it is considered expedient to make in the light of its operation for two years.

Cabinet Proposed Changes

The Scheme of Delegation to Officers.

17. Cabinet indicated that the 21-day timing for Member call in was not crucial as there was no longer any planning delivery grant. Members appreciated, however, that some timescale was necessary and the proposal was to set up a small Member group to look at the 21-day date.
18. The meeting was to be chaired by Councillor Brady and invitations were sent as requested to Councillors Wheeler, Carter, Trotman and Hubbard.
19. The meeting took place on 11 January 2011 attended by Councillors Brady and Wheeler and the decision was to recommend that Cabinet insert the following wording into the Scheme of Delegation: -

“Retain the 21 day call in limit but where it has not been possible or appropriate to call an application in within that time, officers will accept call in requests in the following circumstances: -

- a) An application has not been determined and it can still go to committee and be determined within the target date.*
- b) The application is already going to go out of time (because of negotiations/amended plans etc.) and taking it to committee will make no difference to performance.*

Where neither of the above apply, and the Division Member thinks there is a strong case to delay the determination of the application and take it to committee, they can discuss the case with the relevant Area Development

Manager who will then make an informed decision whether or not to exercise delegated powers.”

This wording has now been inserted into the revised 'Scheme of Delegation to Officers' which forms Appendix 1.

The Planning Code of Good Practice

20. Section 9.6 - second paragraph

Cabinet asked that the ability to register to speak at committee be extended to allow this to be done by phone and e-mail but no more than three working days before the meeting. The premise is that registration will take place on a first come first service basis and if one of those three speakers do not turn up the opportunity to speak will then be offered on to the fourth member of the public to speak. This wording has now been changed accordingly.

21. Section 9.6 - third paragraph

Cabinet asked officers to change the wording of the final sentence to read “If an application is near the boundary with an adjacent parish, each affected council will have a four minute slot. Any additional time will be at the committee chairman’s discretion.” This wording has now been changed.

22. Paragraph 9.7 - final paragraph

Cabinet discussed changes to the final paragraph in this section and sought clarification on the role of Members who were part of the council’s formal appeal submission team, as opposed to making independent submissions. The wording has now been changed to clarify that Members who form part of the formal team will have to submit a Rule 6 statement.

23. Section 11 - Order of Events at Committee Meetings

Cabinet was concerned about proposal (d) whereby members of the public/applicants/agents who wished to make representations in support of an application could have a conflict. Cabinet wanted the wording changed so where there were two or more members of the public who wished to speak in support of an application, only the applicant **or** agent should be allowed to speak, not both. This wording has now been changed.

All of the changes have been incorporated into the relevant sections of the revised 'Planning Code of Good Practice' which forms Appendix 2.

The Localism Bill

24. The key changes to the Planning System proposed in the Localism Bill related to: -

- Abolition of regional strategies.
- Neighbourhood planning.
- Community right to build.
- Requirement to consult communities before submitting very large planning applications.
- Strengthening enforcement rules.
- Reforming the community infrastructure levy.
- Reform the way local plans are made.

- Nationally significant infrastructure projects.
25. None of these have a direct impact on the Scheme of Delegation or the Planning Code of Good Practice but subsequent enabling legislation may have, particularly in respect of clarifying the rules on “predetermination.” The existing rules were developed to ensure that councillors came to council with an open mind. In practice, however, these rules have been interpreted in such a way as to reduce the quality of local debate and stifle valid discussion. In some cases councillors have been warned off doing such things as campaigning, talking with constituents, or publicly expressing views on local issues, for fear of being accused of bias or facing legal challenge.
 26. The Localism Bill makes it clear that it is proper for councillors to play an active part in local discussions, and that they should not be liable to legal challenge as a result.
 27. Unfortunately, the enabling legislation has not yet been passed so no changes are proposed to Section 5 of the Planning Code of Good Practice which relates to ‘Fettering Discretion in the Planning Process’. As soon as the legislation is published the appropriate changes will be made.

Review and officer proposed changes relating to the Scheme of Delegation to Officers

28. The review of the service, changes and anticipated changes to legislation and experience of operating the scheme of delegation have highlighted a number of areas where revisions and additions are necessary to allow the service to continue to operate effectively and reduce the risk of external challenge.
29. This section deals with the proposed changes to the current Scheme of Delegation to Officers and all suggested changes have been incorporated in the revised scheme at Appendix 1.

Expand categories of application which can be called in

30. Considerable concern has been expressed by respondents to the review about the current Scheme’s restriction on Members ability to call some types of application in. It is therefore proposed amend the Scheme to expand the types of application which can be called in to include Listed Building & Conservation Area Consents and Advertisements.

Enforcement

31. The current wording of the enforcement provision may be open to challenge. The intention was that officers could take enforcement action and prosecute on all planning and heritage matters where appropriate, but the wording could be interpreted as only allowing action in line with a Council, i.e. Committee/ Cabinet/Full Council decision. The wording has been amended to remove the ambiguity.

Appeals

32. Where there is a substantial risk of costs being awarded and Counsel advises that specific refusal reasons are unreasonable and/or likely to undermine or weaken the council's case and time does not permit referral back to Committee, officers should be authorised to consult with the Chairman and inform the appellant and the Planning Inspectorate that the council will not seek to defend such reason(s) at appeal. A provision has been inserted.

Trees & Hedges

33. Two provisions have been added dealing specifically with tree and hedge matters to ensure prompt action can be taken in respect of breaches of control, amenity and safety issues.

Other Decisions and Correspondence

34. The provision to make decisions and deal with correspondence has been amended. As currently worded officers can act where legislation **requires** them to do so. There are numerous occasions where officers have to act but there is no specific legislative requirement to do so. The provision has also been amended to cover handling government and inter-planning authority consultations.

Local Validation Checklist

35. There is now a requirement for Councils to validate new planning applications against a locally adopted checklist. Provision has been added to enable officers to prepare the checklist and amend it when necessary.

Article 4 Directions

36. Directions remove permitted development rights and it could be argued that they are not covered by the enforcement clauses so a specific clause has been added to allow service and confirmation.

Revise Planning Conditions

37. There are occasions where there are delays between a committee decision and the issue of a decision notice (for example while negotiations take place to finalise legal agreements) during which circumstances change. This can result in conditions no longer being required, relevant or worded appropriately. (Other 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 will be reported back to a subsequent meeting for Members to note. The scheme has been amended to allow such changes to be made in certain circumstances.

Fees for Planning Advice and Planning Applications

38. In response to changes in legislation the council introduced fees in April for a number of its advice services. Over time these will need to be revised

repeatedly in response to changes in circumstances or legislation.

39. The Government look likely to introduce legislation to allow authorities to set planning application fees (at the moment these are set nationally). The council will have to act quite quickly once the legislation is in place and it is unlikely that the timeframe will allow these to follow a lengthy approval route. As the setting of planning fees is not an executive function, it is suggested that Council be recommended to delegate this function to the Strategic Planning Committee.

Judicial Reviews and Challenges

40. The current scheme refers to instituting judicial reviews but is moot on defending reviews or other challenges. The scheme has been amended to address this issue.

Applications Considered by the Strategic Planning Committee

41. The current Scheme of Delegation contains a provision that the following type(s) of application shall be determined by the Strategic Planning Committee:

Large-scale major developments (defined as those of 200 houses or more or 10,000 square metres of non-residential floor space) which, by their nature (e.g. scale, location etc.) have wider strategic implications and raise issues of more than local importance. This will include applications of a similar nature by Wiltshire Council to develop any land of Wiltshire Council, or for development of any land by Wiltshire Council or by Wiltshire Council jointly with any other person (Regulation 3 applications);

42. A problem has arisen with the final sentence of this clause which can be read as requiring all of the council's own applications meeting the definition criteria having to go to the Strategic Planning Committee. This was never the intention but it has recently resulted in an application for a large extension to a secondary school, supported by both the parish and local Member going before the committee. Had the clause been worded differently the application could probably have been approved under delegated powers.
43. Officers believe the wording should therefore be changed and simplified as follows:

Large-scale major developments which, by their nature (e.g. scale, location etc.) have wider strategic implications and raise issues of more than local importance. This will include applications of a similar nature by Wiltshire Council to develop any land of Wiltshire Council, or for development of any land by Wiltshire Council or by Wiltshire Council jointly with any other person which have similar implications or raise similar issues;

Conclusion

44. The Scheme of Delegation to Officers and the Planning Code of Good Practice have now been amended to reflect the recommendations flowing from the service review, the views expressed by the Cabinet Member for Neighbourhood & Planning and the Chair and Vice Chairs of the four Planning Committees, the

Focus Group on the Review of the Constitution, a Member group looking specifically at the 21 day rule and Cabinet at its meeting on 19 October 2010.

45. The revised Scheme also includes changes to address practical and operational issues which have come to light since it was drafted in 2009.
46. The changes from all sources are considered to be appropriate and are itemised individually in the recommendation below. The changes have also been incorporated into the revised versions of the Scheme of Delegation and Code of Good Practice which form Appendix 1 and 2.
47. If agreed by Cabinet, and following consultation with the Standards Committee, 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.)

Recommendations

48. It is recommended that the actions contained under a) and b) below be endorsed by Cabinet.

a) The Scheme of Delegation to Officers specific to Planning (Part 3C)

It is recommended that the following takes place:

1. Amend the Scheme to expand the types of application which can be called in by Members to include Listed Building & Conservation Area Consents and Advertisements.
2. Amend the Scheme to extend the Member 21 day call in period in specific circumstances (as set out in Appendix 1).
3. Simplify guidance on Member call in procedure for planning applications and ensure officers confirm what action they are taking.
4. 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 2)

5. Amend the Scheme to include the discharge of conditions.
6. Amend the Scheme to clarify what delegated enforcement powers officers have.
7. 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 1)

8. Amend the Scheme to cover actions in respect of tree and hedgerow matters.
9. Amend the Scheme to make it clear that officers can deal with decisions, correspondence and consultations covered by legislation and serve Building Preservation Notices.
10. Amend the Scheme to include determining the requirements for and amending when necessary the local validation list for planning applications.
11. Amend the Scheme to cover the making and confirmation of Article 4 Directions.
12. Amend the Scheme 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 which would be reported back to Committee for information.
13. Amend the Scheme to make provision for delegated fee setting for advice and subsequent amendments to officers, and recommend to Council that fee setting for applications becomes a function of the Strategic Planning Committee.
14. Amend the Scheme to cover defending judicial reviews and other statutory challenges in consultation with the head of Legal Services:
15. 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.)*

16. 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.)
17. Amend the Scheme to clarify that similar considerations apply to both the council's own applications and the public's in respect of triggering consideration by the Strategic Planning Committee.

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 or 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 a. of the revised Scheme, **Appendix 1**)*

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 of the application will then be invited to do so. Where two members of the public wish to speak in support of an application, only the applicant **or** agent will be allowed to speak, not both. If there is only one member of the public wishing to speak both the applicant and agent can speak.
 - 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 propose an alternative motion. Once a motion has been seconded it will be open to the councillors to debate it

and ask further questions of officers if required and determine the issue. The rules of debate as detailed in Part 4 of the Constitution will apply.

This wording of i) was revised by the Focus Group.

- * 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.
3. 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.
 4. 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)

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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:

1. The Scheme of Delegation to Officers;
2. The Planning Code of Good Practice;