

**PLANNING COMMITTEE
8 APRIL 2020**

REPORT OF THE HEAD OF PLANNING, ECONOMY AND REGENERATION

**EMERGENCY DELEGATION OF PLANNING POWERS TO THE HEAD OF
PLANNING, ECONOMY AND REGENERATION**

Cabinet Member(s): Councillor Graeme Barnell, Cabinet Member for Planning and Regeneration
Responsible Officer: Mrs Jenny Clifford, Head of Planning, Economy and Regeneration

Reason for Report:

1. To establish a temporary emergency delegation of decision-making powers to the Head of Planning, Economy and Regeneration to reflect the current national situation in respect of the coronavirus.
2. To put measures in place to ensure that planning decisions can continue to be made in the event that Planning Committee is unable to meet or make decisions at any time over the next 6 months.

RECOMMENDATION:

1. That emergency delegation of planning powers be made to the Head of Planning, Economy and Regeneration as set out in recommendation 4 for a temporary six month period until 30th September 2020.
2. That the emergency delegation as set out in recommendation 4 be implemented only where:
 - (a) a timely meeting of the Planning Committee cannot reasonably be lawfully or safely convened during this period; and
 - (b) decisions which would otherwise be within the remit of the Planning Committee need to be taken to ensure both continuity of decision-making and compliance with statutory performance standards and obligations;
3. That proposed decisions under this emergency delegation -
 - (a) be the subject of a full officer report sent to all members of the Planning Committee and the Ward Member(s) at least 3 clear days before a decision can be taken; and
 - (b) be made in consultation with the Chair or Vice Chair of the Planning Committee, or, in the event that neither is available:
 - i) 3 Members of Planning Committee; or in the event that a total of 3 are not available
 - ii) up to 3 Planning Committee Substitute Members, in order to make up any deficit in numbers under i)

4. That the emergency delegation include decision-making in relation to the following:

In the case of all Applications:

1. *The application is accompanied by an Environmental Impact Assessment;*
2. *The application is a significant or major departure and recommended for approval;*
3. *The Ward Member, Chairman or Vice Chairman requires that the committee considers an application having given clear planning reasons*

In the case of Conservation:

1. *It requires the issue of an urgent works notice*

5. That all decisions taken under this emergency delegation be reported to all Members of the Planning Committee on a weekly basis.

Financial Implications: This report considers decision-making arrangements during the current emergency and the authority under which such decisions are made. It is not considered that the temporary delegation sought will in itself have any material financial implications.

Budget and Policy Framework: Nothing in this report gives rise to any implications for the Framework.

Legal Implications: The Constitution sets out the legal basis for decisions to be made in exercising the planning function of the Council. This emergency delegation will not affect the existing permanent scheme of delegation to the Head of Planning, Economy and Regeneration. It is a temporary measure which the Planning Committee can determine at any time and can be made without recourse to Standards Committee or Council - the Constitution is not amended. It is proposed to operate for a finite period in order to allow decisions to be made in the event that Planning Committee is unable to meet or take decisions on its usual regular basis or at any single point in the next 6 months. There is a sunset of 30 September 2020.

The proposed delegation has been designed and scoped to ensure accountability and probity in decision-making. It does not, at the moment, include decisions on Council applications, or those made by Officers or Councillors within the scope of this delegation in order to maintain transparency and probity. Furthermore, at the moment, the Council's Constitution requires those to be considered by the Planning Committee precisely for those reasons.

Risk Assessment: The risk of not being able to make decisions on key planning applications during this time of national emergency has been considered and the proposed temporary emergency delegation seeks to overcome this. The delegation has been scoped to reduce decision making risk and to ensure there remains Member involvement within the decision making process. The cascade approach to consultation with Members seeks to ensure there remains resilience.

At this time of restrictions on movement and the need to comply with social distancing requirements, holding Planning Committee meetings in person that allow for meaningful public participation and in a way that is able to reduce risk of infection is challenging. We are in a transition period until (i) the Government makes regulations allowing meetings to be convened virtually or by other means, and (ii) the Council has put in place measures to enable meetings to proceed in accordance with the new regulations. The delegation sought is therefore temporary and will apply only in specific circumstances.

Equality Impact Assessment: No equality issues are identified for this report.

Relationship to Corporate Plan: Contributes to Corporate Plan Priorities: Deliver more affordable housing and greater numbers of social rented homes: Promote the regeneration of our town centres by working with landlords and property developers to improve and increase the supply of quality housing.

Impact on Climate Change: It is not considered that there will be impacts upon climate change arising from the subject matter of this report.

1.0 INTRODUCTION/BACKGROUND

- 1.1 Schemes of Delegation form part of the Council's Constitution and set out a series of criteria for committee and officer decisions. It sets out the legal basis for decisions to be made in exercising the planning function of the Council. In relation to that for planning powers, the scheme of delegation grants certain delegated decision making powers and duties to the Head of Planning, Economy and Regeneration within a defined scope which is set out by a series of criteria. A scheme of delegation for planning powers ensures that exercising the powers under the Planning and other related Acts is undertaken in an economic, efficient and effective way, which reduces the potential for delay and the overburdening of Planning Committee, yet ensures accountability and safeguards the position of the Council. It is through the operation of the scheme of delegation that planning related decisions on applications are either referred to Planning Committee for determination or are decided at officer level under delegated authority. Delegated authority allows for the bulk of day to day operational decision making.
- 1.2 Changes to the scheme of delegation for planning powers to the Head of Planning, Economy and Regeneration are delegated to the Planning Committee within the Constitution. Schemes of delegation are set out within the Council's Constitution and accordingly amendments require a change to the constitution and consideration by Standards Committee. Such changes then require the approval of Council. This report deals with a temporary emergency delegation by the Planning Committee in accordance with the scope and arrangements set out and is not intended to supersede the existing scheme of delegation set out in the Constitution which will continue in place. Accordingly it is considered to be within the remit of Planning Committee to grant as it will leave the existing scheme of delegation and Constitution unaffected.

2.0 THE NEED FOR EMERGENCY DELEGATION OF POWERS

- 2.1 The country is currently facing the unprecedented challenge arising from the coronavirus COVID-19 pandemic and a national emergency has been declared. In order to combat the spread of the virus limitations are in place to reduce physical contact, movement and gatherings. The most vulnerable in society by age and underlying medical condition are being 'shielded' via self-isolation in order to reduce exposure. All the population are deploying social distancing to reduce infections and save lives. The impact upon society at this time is profound.
- 2.2 The Government has made it clear that measures need to be taken to help the economy and Councils are being asked to make every effort to continue to provide vital public services. On 23rd March 2020 the Chief Planner for England within the Ministry of Housing, Communities and Local Government issued advice on planning decision making:

'We understand that some councils are concerned about the implications of COVID-19 for their capacity to process planning applications within statutory timescales. It is important that authorities continue to provide the best service possible in these stretching times and prioritise decision-making to ensure the planning system continues to function, especially where this will support the local economy.'

We ask you to take an innovative approach, using all options available to you to continue your service. We recognise that face-to-face events and meetings may have to be cancelled but we encourage you to explore every opportunity to use technology to ensure that discussions and consultations can go ahead. We also encourage you to consider delegating committee decisions where appropriate. The Government has confirmed that it will introduce legislation to allow council committee meetings to be held virtually for a temporary period, which we expect will allow planning committees to continue.

We encourage you to be pragmatic and continue, as much as possible, to work proactively with applicants and others, where necessary agreeing extended periods for making decisions'

- 2.3 There is a vital need to put emergency measures in place for a temporary period in order to allow the continuation of planning decision making in the event that Planning Committee is unable to meet. We are already aware that many Members of Planning Committee are in self isolation with the effect that in order to be quorate, there is a need to employ substitute members. Whilst the Government has introduced legislation giving the power to make regulations as to the holding of meetings, including virtual meetings, those regulations have yet to be tabled. At this time the operation of Planning Committee meetings is severely restricted and can only take place with robust safeguards to reduce risk of infection and secure the safety of participants. The public is also being instructed to leave home only under specific circumstances, these being inconsistent with attendance at these meetings. There is every prospect that during this time Planning Committee meetings may not be able to take place or make decisions as a result of either being inquorate or due to risk of infection. Temporary emergency delegation to the

Head of Planning, Economy and Regeneration is required in order to ensure decisions can continue to be made. Such emergency delegation is proposed to be in place for a six month period up to the end of September 2020 and be enacted in the event that Planning Committee is unable to meet or make decisions at any point during this period.

- 2.4 The operation of the emergency delegation seeks to continue to involve Members. As set out, a cascade approach to Member consultation is proposed in order to provide resilience.

3.0 SCOPE OF THE EXISTING SCHEME OF DELEGATION

- 3.1 The parts of the existing scheme of delegation to the Head of Planning, Economy and Regeneration relevant to this report are as follows:

HEAD OF PLANNING, ECONOMY AND REGENERATION

Delegation

The Head of Planning, Economy and Regeneration is authorised to exercise all powers of the Council as Local Planning Authority (including the conduct of appeals and enquiries) under the Planning Acts, the Localism Act and the Growth and Infrastructure Act (unless expressly delegated to another officer) except where there are specific exceptions.

Delegation specific to the Planning Function

To exercise all the powers of the Council as Local Planning Authority (including the conduct of appeals and enquiries) under the Planning Acts, (unless expressly delegated to another officer) except where:-

In the case of all Applications:

- 1. In the opinion of the Head of Planning, Economy and Regeneration or the Area Planning Officer, the application is of a significant controversial or sensitive nature;*
- 2. The application has been submitted by or on behalf of the Council;*
- 3. The application is from an Elected Member or Officer;*
- 4. The application is accompanied by an Environmental Impact Assessment;*
- 5. The application is a significant or major departure and recommended for approval;*
- 6. The Ward Member, Chairman or Vice Chairman requires that the committee considers an application having given clear planning reasons;*
- 7. Applications will be delegated to the Head of Planning, Economy and Regeneration to refuse if S106 agreements are not signed and completed within 8 or 13 week timescale.*

In the case of re-negotiations on a planning obligation (S106 Agreements and Undertakings);

- 1. The Ward Member, Chairman and Vice-Chairman of Planning Committee and Cabinet Member for Housing (the latter in the case of amendments to affordable housing only) requires that the Committee consider the proposed changes having given clear planning reasons*

- 2. In the case of renegotiations on another planning obligation issue the Ward Member, Chair and Vice Chair of Planning requires that the Committee consider the proposed changes having given clear planning reasons, otherwise they be delegated to the Head of Planning, Economy and Regeneration*

In the case of Conservation:

- 1. It requires the issue of repair and urgent work notices*
- 2. It involves the submission of funding bids or schemes that have budgetary implications*

4.0 SCOPE OF TEMPORARY EMERGENCY DELEGATION

- 4.1 Emergency delegation to the Head of Planning, Economy and Regeneration is proposed to cover where:

In the case of all Applications:

- 4.1 The application is accompanied by an Environmental Impact Assessment;*
- 4.2 The application is a significant or major departure and recommended for approval;*
- 4.3 The Ward Member, Chairman or Vice Chairman requires that the committee considers an application having given clear planning reasons*

In the case of Conservation:

- 1. It requires the issue of urgent work notices*
- 4.2 An urgent works notice may be served where works are urgently necessary for the preservation of a listed building and should generally be restricted to urgent repairs to keep a building wind and weather-proof and safe from collapse, or action to prevent vandalism or theft. The issue of such a notice may not be able to wait until Planning Committee is able to meet or make decisions during this temporary 6 month period and accordingly there is a need to ensure that a decision can be taken thereby allowing for a rapid response if warranted.
 - 4.3 'Normal' operation of Planning Committee includes the consideration of major applications and identification of those that the Committee wishes to determine. A series of major applications are therefore currently scheduled to be determined by Planning Committee. It is proposed to discuss each of these with the Chair and Vice Chair of Planning Committee (and other Members in accordance with the cascade set out in recommendation 3 as necessary) in order to review whether they remain scheduled for future Committee determination or can be determined within the scope of this emergency delegation.
 - 4.4 Ward Members have the ability to call applications in to be determined by Planning Committee where a planning reason for doing so is provided. Call ins have already been received to date for some applications. It is proposed to

contact the Ward Members to review with them whether in light of the circumstances they still wish their call in to stand or whether it is withdrawn.

- 4.5 Members are asked to note that the proposed emergency delegation does NOT propose to cover applications which in the opinion of the Head of Planning, Economy and Regeneration or the Area Planning Officer, the application is of a significant controversial or sensitive nature.

Contact for more Information: Jenny Clifford, Head of Planning, Economy and Regeneration 01884 234436 jclifford@middevon.gov.uk

Circulation of the Report: Councillor Graeme Barnell, Councillor Polly Colthorpe

List of Background Papers:

Scheme of Delegation to the Head of Planning, Economy and Regeneration
Mid Devon District Council Constitution February 2020