

## **PLANNING AND REGULATORY COMMITTEE**

### **7 JULY 2020**

## **PROTOCOL FOR DELEGATION OF DECISION MAKING: PROPOSED AMENDMENTS**

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### **Purpose of Report**

1. To agree a revised Protocol for Delegation of Decision-Making from the Planning and Regulatory Committee to the Strategic Director of Economy and Infrastructure.

### **Background**

2. The existing delegation arrangements were formulated in June 2005, with only minor amendments in September 2011, and inconsequential updates in April 2013 and January 2016 (such as updates to job titles) and is now in need of clarification and update in the light of current circumstances and legislative changes.
3. Whilst the review of the delegation arrangements has been prompted by the coronavirus (COVID-19) pandemic, given the last major update to the Protocol was approximately 15 years ago, it is, therefore, considered opportune to ask the Planning and Regulatory Committee to review the current delegation arrangements.
4. The Protocol for Delegation of Decision Making lists the different categories of planning applications and other development related matters (known as Provisions) and sets out which Provisions are delegated to the Strategic Director of Economy and Infrastructure or his authorised officer, subject to a number of Restrictions appropriate to the type of Provision. This ensures that minor and non-controversial applications can be determined by officers under delegated powers, and only significant and / or controversial applications are considered by the Planning and Regulatory Committee, thus ensuring the expedite determination of non-controversial applications and the most effective use of Members' time. The latest version of the Protocol (2016) is attached for information as Appendix 1.

### **Purposes of a Delegation Protocol**

5. The main reason for delegating areas of decision-making from the Planning and Regulatory Committee to officers is to enable Committee to use its time most effectively and to focus on applications of major significance and / or widespread local concern. Although a County Planning Authority, Worcestershire County Council receives a number of minor planning applications, which do not raise issues of policy or widespread local concern. These may be quite properly dealt with at officer level provided that all the necessary technical and public consultation procedures have been undertaken.
6. An additional reason for delegation of decision-making is to speed up the planning system to facilitate economic growth. This also provides applicants, including other

departments of the County Council, with the earliest possible certainty of a planning permission in order to make investment and contract decisions with confidence. The Ministry of Housing, Communities and Local Government lays great store by the speed of decision-making and assesses planning authorities' performance against the 'speed' and 'quality' of their decisions on major development. Where an authority fails to meet the relevant thresholds (set out below), the Secretary of State can designate the planning authority as underperforming. Applicants then have the option of submitting their applications for major development directly to the Planning Inspectorate (who act on behalf of the Secretary of State) for determination.

7. The designation thresholds are:

- **Speed** – Applications for major development: less than 60% of an authority's decisions made within the statutory determination period or such extended period as has been agreed in writing with the applicant (measured over a 2-year period); and
- **Quality** – A local planning authority is eligible for designation if 10% of an authority's total number of decisions on applications are overturned at appeal (measured over a 2-year period).

8. In addition, the Government's Planning Guarantee is their policy that no application should spend more than a year with decision-makers, including any appeal. In practice this means that planning applications should be decided in no more than 26 weeks, unless a longer period for the decision has been agreed. If the applicant has not agreed an extension of time in which to determine the application and has not exercised their right of appeal, and the application remains undetermined after 26 weeks, then the fee paid by the applicant can be refunded to them. This provides a further incentive for planning authorities to determine applications as quickly as practicable possible.

## Current Situation

9. Whilst the current delegation arrangements last underwent a major update approximately 15 years ago, they are largely considered to be operating effectively. However, from time to time, applications for minor development, which do not raise policy concerns, and which do not raise great public concerns or objections have been considered by the Planning and Regulatory Committee, on the basis of receipt of only one objection. Furthermore, the current Protocol allows for officer judgment in whether an objection is a "minor" objection, defined as "*objections that do not, in the opinion of the Director or his authorised officer, give rise to issues of serious concern or which can be addressed by conditions on an approval*", or "material" objection, defined as "*issues of significant policy concern or widespread local controversy*". Whilst this allows for discretion, it also introduces subjectivity and opportunity for Ombudsman complaints.

10. As set out earlier in this report, the Government places great store by the speed of decision-making, and whilst Worcestershire County Council's performance for the speed of decision-making has consistently been well above the designation threshold (94.4% of applications determined within the statutory timescales or agreed extension of time, between January 2018 to December 2019), by reviewing the existing delegation arrangements, it will further assist with shortening the length of time in which planning

applications for minor and uncontroversial developments are determined, providing even greater certainty for applicants.

11. The current Protocol also draws a distinction between County Council planning applications for education purposes and all other types of planning applications. It also singles out objections from Sport England, as a reason not to trigger an application for education purposes to Committee. It is understood that this distinction and specific reference to Sport England was introduced in 2005 as at that time regular objections were being received from Sport England in relation to extensions to schools on playing fields, regardless of the degree of impact or percentage of playing field being lost, delaying the determination of such applications. It is considered that this could be portrayed as inconsistent and unfair to applicants for non-education developments and discriminates against Sport England.

12. The current Protocol also references outdated legislation, policy and guidance, which is in need of an update.

### **The Proposed Revised Protocol**

13. Attached as Appendix 2 to this report is a revised Protocol for Delegation of Decision Making from the Planning and Regulatory Committee to the Strategic Director of Economy and Infrastructure. It clarifies and closely follows the existing Protocol, but also proposes extensions to deal with the areas of concern highlighted above.

14. Most notably it proposes new and amended Restrictions associated Provision 1: *“To approve all County Matter and County Council planning applications”*, subject to the following Restrictions:

- a) *“In accordance with the adopted development plan; and*
- b) *Subject to any reference to Planning Casework Unit under Standing Directions; and*
- c) *Subject to no outstanding material statutory consultee objections; and*
- d) *Subject to no more than 2 outstanding material non-statutory consultee or individual written public objections from separate addresses that are material; and*
- e) *Subject to consultation with the Chairman and Vice Chairman of the Planning and Regulatory Committee in respect of Restriction d) above”.*

15. Where all the above Restrictions are met (a to e), it is considered that the application can be delegated to the Strategic Director of Economy and Infrastructure or his authorised officer.

16. Amendments are proposed to the Protocol to make it explicit that decisions are delegated to the Strategic Director of Economy and Infrastructure or his authorised officer in relation to the following types of applications:

- Works to trees subject to a Tree Preservation Order (TPO);
- Non-Material Amendments following a grant of planning permission;
- Prior notification / approval;

- Lawful development certificates – in consultation with the Assistant Director for Legal and Governance; and
- Consent to display an advertisement(s) – subject to Restrictions (see Appendix 2).

17. Together with making it explicit that the service of Planning Contravention Notices (PCNs) a Requisition for Information, and to request particulars under Section 330 of the Town and Country Planning Act 1990 are also delegated to the Strategic Director of Economy and Infrastructure or his authorised officer. These notices / requests are investigative tools / powers that enable the County Planning Authority to require detailed information about suspected breaches of planning control and are often the first step before deciding what if any enforcement action should be taken.

18. The Protocol has also been updated to remove specific reference to “*County Council planning applications for education purposes*”, to enable such applications to be considered in the same manner and against the same criteria as all County Council and County Matter applications for the purposes of the Protocol for Delegation of Decision Making. Thus, ensuring a consistent and fair approach to all internal and external applicants. In addition, updates have been made to take account of the latest legislation and Government guidance.

19. It is proposed to amend the definitions section of the Protocol, to remove reference to “minor material” objections and update the definition of “material” objections to reflect the definition included in the Government’s Planning Practice Guidance (PPG). In doing so, this will remove the need for officer judgement and remove the subjectivity between when an objection is a “minor” objection and can be delegated or is a “material” objection and should be considered by the Planning and Regulatory Committee.

## **The Head of Strategic Infrastructure and Economy's Comments**

20. Planning is an extremely sensitive area of decision-making which is frequently subject to great public concerns and objections. It is important that these objections are properly dealt with and where issues of substantial planning concern are raised, the objectors are given the chance to express their concerns in writing and / or by addressing the Planning and Regulatory Committee itself. Nonetheless, there is an obligation placed on Planning Authorities by the Ministry of Housing, Communities and Local Government to deal with planning applications in an efficient and effective manner. Indeed, should planning authorities be designated as underperforming authorities by Ministry of Housing, Communities and Local Government applicants would have an opportunity to circumvent the Local Planning Authority, applying directly to the Planning Inspectorate (who act on behalf of the Secretary of State). Furthermore, the Government’s Planning Guarantee incentivises planning authorities to determine planning applications within 26 weeks, as otherwise they risk having to refund the application fee (unless a longer period for the decision has been agreed with the applicant). Elected Members’ time is also valuable and there are many competing responsibilities in being a County Councillor. It is, therefore, important that the matters that go before meetings of the Planning and Regulatory Committee are only the ones that genuinely need their attention by reason of planning policy issues or widespread local concern. It is considered that the proposals in this revised Protocol will help the Planning and Regulatory Committee to be even more effective and to allow the County Planning Authority to improve the speed of the service for its customers.

## Recommendation

21. **The Head of Strategic Infrastructure and Economy recommends that the Protocol for Delegation of Decision Making set out in the Appendix 2 be adopted.**

## Contact Points

### County Council Contact Points

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## Background Papers

In the opinion of the proper officer (in this case the Head of Strategic Infrastructure and Economy) the following are the background papers relating to the subject matter of this report:

[Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015 \(as amended\).](#)

[Improving Planning Performance – Criteria for Designation \(Revised 2018\) – Ministry of Housing, Communities and Local Government.](#)

[Circular and Direction – The Town and Country Planning \(Consultation\) \(England\) Direction 2009 – \(Circular 02/2009\) – Communities and Local Government.](#)