

BARNSLEY METROPOLITAN BOROUGH COUNCIL

This matter is a Key Decision within the Council's definition and has been included in the relevant Forward Plan

REPORT OF THE EXECUTIVE DIRECTOR PLACE TO CABINET ON 3 NOVEMBER 2021

Public or private: Public

PROPOSED REVISIONS TO THE SCHEME OF DELEGATION RELATING TO PLANNING DECISIONS

1. PURPOSE OF REPORT

- 1.1 To update the scheme of delegation relating to planning decisions to ensure it is able to endure through an anticipated period of change arising from the government's forthcoming planning reforms, to retain some of the changes made temporarily during the pandemic and to improve efficiency in decision making.

2. RECOMMENDATIONS

- 2.1 **That the proposed delegations from Planning and Regulatory Board to specified officers/posts are amended as per the attached Terms of Reference of the full Council, Regulatory Boards and Committees and Functions Delegated to Officers.**
- 2.2 **That the report be referred to Full Council for approval.**

3. INTRODUCTION

- 3.1 The Council constitution identifies what delegated powers particular officers have in carrying out their duties. This includes delegation of decisions from Full Council to Planning and Regulatory Board (PRB) and then further delegation from PRB to a range of senior officers, including the Head of Planning and Building Control, who is the Council's Chief Planning Officer.
- 3.2 The last substantive changes to delegation of planning decisions from PRB to the then Chief Planning Officer were made in 2009. However, to ensure that decision making could continue during the pandemic, all planning matters have been temporarily delegated to the Head of Planning and Building Control.
- 3.3 For applications that would have ordinarily been determined by PRB, the temporary arrangements have required PRB members to be consulted before any decision is made. However, where applications were of such significance that it was been deemed inappropriate for them to be determined using officer delegation, virtual PRB meetings were held. More recently, physical meetings have taken place but again with smaller agendas that might otherwise have been the case given a number of decision have instead been made by the Head of Planning and Building Control following consultation with members of PRB.

- 3.4 These temporary changes have enabled PRB to focus its time on the larger, more contentious planning applications whilst enabling members to still have their say regarding smaller, less contentious applications that they have been consulted on prior to the Head of Planning and Building Control determining those. A comparison of the decisions taken during the period of extended delegation with decisions taken by PRB in the period leading up to the pandemic is included within Appendix B.
- 3.5 The temporary arrangements have been rolled forward on a roughly quarterly basis during the pandemic and are due to end on 31st October 2021. The latest decision to extend the temporary arrangements included a commitment to review of the longstanding scheme of delegation used up until the pandemic with a view to new permanent arrangements being in place before the end of this year.
- 3.6 When reviewing the section of the scheme of delegation that deals specifically with planning applications, it has also been identified that there are other areas where the scheme of delegation needs updating to ensure decisions are taken at the correct level and reflect how the various services would prefer to operate. These include:
- Transferring delegation of various planning and building control matters from the Executive Director, Core Services to the Head of Planning and Building Control in consultation with the Service Director, Legal
 - Transferring delegation of various highway matters from the Executive Director, Core Services in consultation with the Head of Highways and Engineering to the Head of Highways and Engineering (some of which are in consultation with the Service Director, Legal).
 - Transferring delegation of matters under Section 115 of the Highways Act 1980 (permission for provision etc of services, amenities, recreation and refreshment facilities on the highway) from the Executive Director, Place to the Head of Highways & Engineering
 - Requiring certain matters currently delegated to the Head of Planning and Building Control to be delegated to the Head of Planning and Building Control in consultation with the Service Director, Legal (e.g. enforcement)
- 3.7 At the same time an opportunity has also been taken to consolidate the content so that it endures over time, rather than having to be updated more frequently to reflect slight changes to relevant legislation.

4. PROPOSAL AND JUSTIFICATION

Determination of Planning Applications

- 4.1 Instead of PRB having to determine all planning applications that sit within the following categories, it is proposed that they are permanently delegated to the Head of Planning and Building Control in consultation with PRB:
- a) Planning applications submitted on behalf of the Council for its own development
 - b) Planning applications submitted by or on behalf of a Member of the authority or any officer employed in Development Management, or their respective spouse or partner

c) Planning Applications that would involve Section 106 Agreements or Unilateral Undertakings

- 4.2 The recommended approach, which has been used throughout the pandemic, would ensure PRB members still have the opportunity to review officer recommendations for applications that fall within these categories. Where a member considers that any application they are consulted on should instead be determined by PRB, they will be able to request that the application is referred to the following PRB meeting. This request would then be considered by the Head of Planning and Regulatory Board and if it is agreed that the issues raised should properly be addressed by the board, the application would be included on the agenda for the following PRB meeting.
- 4.3 These arrangements will help to ensure that planning applications within the three identified categories can be determined in a more timely manner. In part this is because PRB agendas have to be published a week in advance of the meeting taking place and because meetings are only held every 4 weeks with occasional longer gaps. For minor applications where there is an 8-week target to make a decision, it can be challenging to achieve the target if the application has to go to PRB and the consultation period is due to close just after the papers for a PRB meeting have been published.
- 4.4 Determining more applications using delegated powers is also more cost effective. This is particularly important where the application is a minor development that only attracts a modest planning fee. Where an application has to go to PRB, there are significant additional costs associated with the officer time taken to present applications to board that need not be considered by the members. It also reduces the length of PRB meetings so that members of the board can devote more time to considering the larger, more contentious applications.
- 4.5 When assessing applications where PRB members are due to be consulted or have been consulted and have made a request for the application to be considered at the next meeting, the Head of Planning and Building Control would be expected to continue adopting a precautionary approach so that, if in doubt, an application was referred to the next PRB meeting rather than being determined by officers. This could typically apply in the following circumstances:
- Where there have been a significant number of objections from the public
 - Where the applicant is a senior officer within the Planning Service
 - Where the S106 agreement includes a bespoke financial contribution that has not been based on a formula contained within a Supplementary Planning Document.
- 4.6 The Head of Planning and Building Control would also be expected to adopt a consistent approach to requests from members, considering these solely on their merits. Thereafter, a list of the applications determined using delegated powers will continue to be published at the next available PRB meeting so that all members can view the decision alongside a summary of how any comments received from PRB members were considered.

- 4.7 The proposed approach therefore includes measures to ensure that the Head of Planning and Building Control is responsible in exercising increased delegated powers with transparency being paramount. At the same time, it will ensure PRB members are able to focus their time and effort on the larger, more contentious applications whilst enabling smaller, uncontentious applications to be determined quicker and at a lower cost.
- 4.8 As the changes identified below have been put into practice on a temporary basis since the start of the pandemic it has been possible to assess how they have impacted upon decision making by comparing published planning application statistics before and after the pandemic. This is demonstrated in the following table:

Planning Application Statistics Pre and Post Pandemic

Time Period	Decisions Delegated			Decisions Granted		
	Barnsley	All Unitary Authorities	England	Barnsley	All Unitary Authorities	England
1st Jan - 31st Dec 2019	95%	96%	95%	91%	89%	88%
1st April 2020 - 31st March 2021	95%	97%	96%	89%	89%	88%

Source: Live tables on planning application statistics:

<https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>

- 4.9 The table shows that across England and throughout all Unitary Authorities there was a 1% increase in applications that were delegated but that the percentage of applications that was granted remained unchanged. In Barnsley there was also an increase in applications delegated but this amounted to less than 1%. During that same period, the percentage of planning applications granted dropped by 2%. The data therefore indicates no correlation either locally or nationally between the levels of officer delegation and types of decisions being made. It also shows Barnsley lags very slightly behind other unitary authorities and England as a whole in respect of levels of officer delegation. On this basis, it is considered that carrying forward the temporary delegation arrangements for planning applications on a permanent basis will keep Barnsley broadly in line with other unitary authorities and England as a whole and is unlikely to impact on the type of decisions that are ultimately made.

Other Changes

- 4.10 The current arrangements delegate a whole host of matters to the Executive Director, Core Services. Following a review, it is considered that delegating such a wide array of matters is not necessary and is potentially less efficient as it risks creating a bottleneck within the decision-making process. Nonetheless, it is recognised that some of the matters currently delegated to the Executive Director, Core Services do require legal involvement. Working on the principle that we should seek to delegated to the lowest tier of management possible but at the same time ensuring there is sufficient legal oversight, officers therefore consider that a range of matters can be dealt with at Head of Service level. In some cases, this is in consultation with the Service Director, Legal Services. Where this is the case,

legal already has significant involvement and so the proposed arrangements will not place a greater burden on legal. In contrast, the amendments will streamline decision making so that once legal have been consulted the services can then administer the issuing of decisions/notices etc.

- 4.11 Consolidation of the scheme of delegation is proposed to make it easier to understand and to avoid having to update it every time minor changes are made to the specified legislation.

5. CONSIDERATION OF ALTERNATIVE APPROACHES

- 5.1 There are two clear alternatives to the recommendations, which are:

- a. To let the temporary arrangements lapse and revert back to the previous delegation arrangements
- b. To delegate the applications within the categories identified to the Head of Planning and Building Control without a requirement to consult with PRB.

- 5.2 It is considered that reverting back to previous delegation arrangements, which have not been substantively amended since 2009, would represent a missed opportunity to focus PRB attention solely on the larger, more contentious applications and to achieve associated efficiencies when processing the affected smaller and less contentious applications.

- 5.3 In contrast, not requiring PRB to be consulted in relation to the Council's own applications, those submitted by staff within the Planning Service and those requiring Section 106 agreements or unilateral undertakings would have risked decision being made without any real oversight by the board. Such a system would then have been open to accusations that the Council was not being sufficiently open and transparent, particularly when determining its own applications.

6. IMPLICATIONS FOR LOCAL PEOPLE/SERVICE USERS

- 6.1 No direct implications arising from this report.

7. FINANCIAL IMPLICATIONS

- 7.1 Consultations on the financial implications of this report have taken place with representatives of the Service Director for Finance and S151 Officer
- 7.2 The amendments to the delegation arrangements will modestly reduce the costs of determining some planning applications that will no longer have to be determined by PRB. It is not possible to estimate the saving as these relate primarily to officer time. The savings achieved will be monitored and considered as part of MTFS.

8. EMPLOYEE IMPLICATIONS

- 8.1 No direct implications arising from this report.

9. LEGAL IMPLICATIONS

- 9.1 The recommendations apply to a relatively modest number of planning applications

and as long as officers determine applications in accordance with the amended delegation arrangements, there will be no legal implications.

10. CUSTOMER AND DIGITAL IMPLICATIONS

10.1 Not relevant for this report

11. COMMUNICATIONS IMPLICATIONS

11.1 If approved, all members will be notified of the updated delegation arrangements.

12. CONSULTATIONS

12.1 Informal discussions have taken place with the Chair of Planning and Regulatory Board and officers in Legal and Governance in advance of preparing this report. There is no statutory requirement to consult on the changes.

13. EQUALITY IMPACT

13.1 Equality Impact Assessment Pre-screening has been completed determining that a full EIA is not required

14. THE CORPORATE PLAN AND THE COUNCIL'S PERFORMANCE MANAGEMENT FRAMEWORK

14.1 The recommendations relate to governance arrangements for decision making in order to ensure we are a modern, inclusive, efficient and high-performing council as per the 'Enabling Barnsley' priority in the Corporate Plan.

15. TACKLING THE IMPACT OF POVERTY

15.1 Not relevant for this report

16. TACKLING HEALTH INEQUALITIES

16.1 Not relevant for this report

17. REDUCTION OF CRIME AND DISORDER

17.1 Not relevant for this report

18. RISK MANAGEMENT ISSUES

18.1 Increasing officer delegation will always present a risk that increased powers will be used irresponsibly. However, the proposed arrangements have been used throughout the pandemic and have not provoked any such concerns. This is in part because of the transparency of the process whereby all applications determined by the Head of Planning and Building Control in consultation with PRB members are published in a report to the following PRB meeting. These arrangements would be retained should the recommendations be approved.

19. HEALTH, SAFETY AND EMERGENCY RESILIENCE ISSUES

19.1 Not relevant for this report

20. COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

20.1 The public and members will retain the right to request that applications are determined by PRB and the convention will be considered throughout all stages of the process.

21. CONSERVATION OF BIODIVERSITY

21.1 Not relevant for this report

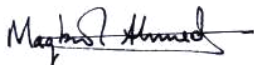
22. LIST OF APPENDICES

Appendix 1: Existing Scheme of delegation

Appendix 2: Proposed Amended Scheme of Delegation

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Financial Implications/Consultation



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*(To be signed by senior Financial Services officer
where no financial implications)*