

Policy Group - 22 November 2017

Report from Policy Development Panel on planning and enforcement

1. Purpose of report

To present the findings of the Policy Development Panel (PDP) on planning and enforcement.

2. Key issues

- 2.1 On 17th May 2017, Policy Group resolved to appoint a PDP to review the operation of the scheme of delegation in relation to planning applications. On 21st June 2017, Policy Group resolved that the PDP also review the current management information in relation to planning enforcement provided to Councillors.
- 2.2 The PDP met on 25th September 2017. It considered reports setting out current referrals to planning committee; current practice elsewhere in Dorset; and current arrangements in relation to enforcement management information and referrals.
- 2.3 In summary the PDP resolved to request Council to update the scheme of delegation to:
- always refer an application to Committee where recommendation conflicts with decision previously made by committee for similar application on same site;
 - include a requirement that councillors discuss the individual application with the case officer and Development Manager before requesting referral;.
 - enable automatic referral of a planning application for consideration by the Planning Committee if three councillors representing the Ward in which the development is proposed or adjacent Wards request it; and
 - provide more clarity in relation to when councillors can request Planning Committee consider a planning enforcement matter.
- 2.4 The proposed changes to the scheme of delegation are shown in **Appendix 1**. The changes are shown underscored and also include some minor additions for the purposes of clarity that officers using the scheme on a daily basis have requested. The PDP recommended that the management information in relation to enforcement should stay the same and that Planning Committee should not get involved in matters in relation to individual planning enforcement cases.

3. Recommendation

- 3.1 A report be submitted to Council requesting that the changes to the scheme of delegation shown in Appendix 1 be adopted.
- 3.2 Policy Group reviews the scheme of delegation again a year after adoption of the changes.

4. Policy issues

Determining planning applications and dealing with planning enforcement in an effective, open and transparent way is an important part of the democratic process. It directly contributes to all five of the Council's priorities.

4.1 Implications

4.1.1 Resources

None.

4.1.2 Equalities

None.

5. Further information

Planning scheme of delegation – the current system in Purbeck

- 5.1 Since July 2014, if a District Councillor wishes to refer an application to Planning Committee, a meeting is arranged with the case officer, the Councillor, the Development Manager and / or the General Manager – Planning and Community Services and the Chair or Vice Chair of Planning Committee. At the meeting, the attendees discuss the key issues and decide whether it should be referred to Planning Committee. The Chair or Vice Chair of Planning Committee has the final say. This meeting is minuted by an officer from Democratic Services.
- 5.2 Many of these meetings have been helpful in enabling the Ward Member to articulate their concerns and that of the community. When the issues are discussed in more depth, if the request is declined by the Chair or Vice Chair, the Ward Member more fully appreciates the material planning considerations and can separate these out from issues which the planning system cannot take into account (covenants, possible second homes etc.). The minute of the meeting is useful for explaining the issues to objectors / supporters / town and parish councils.
- 5.3 Since July 2014 when the current system was implemented, there have been 16 requests for delegated applications to be referred to Planning Committee. Of these 7 were referred and 9 were not. In addition, in the same period, officers have referred 11 delegated applications to Planning Committee.

Planning scheme of delegation – what does good practice look like

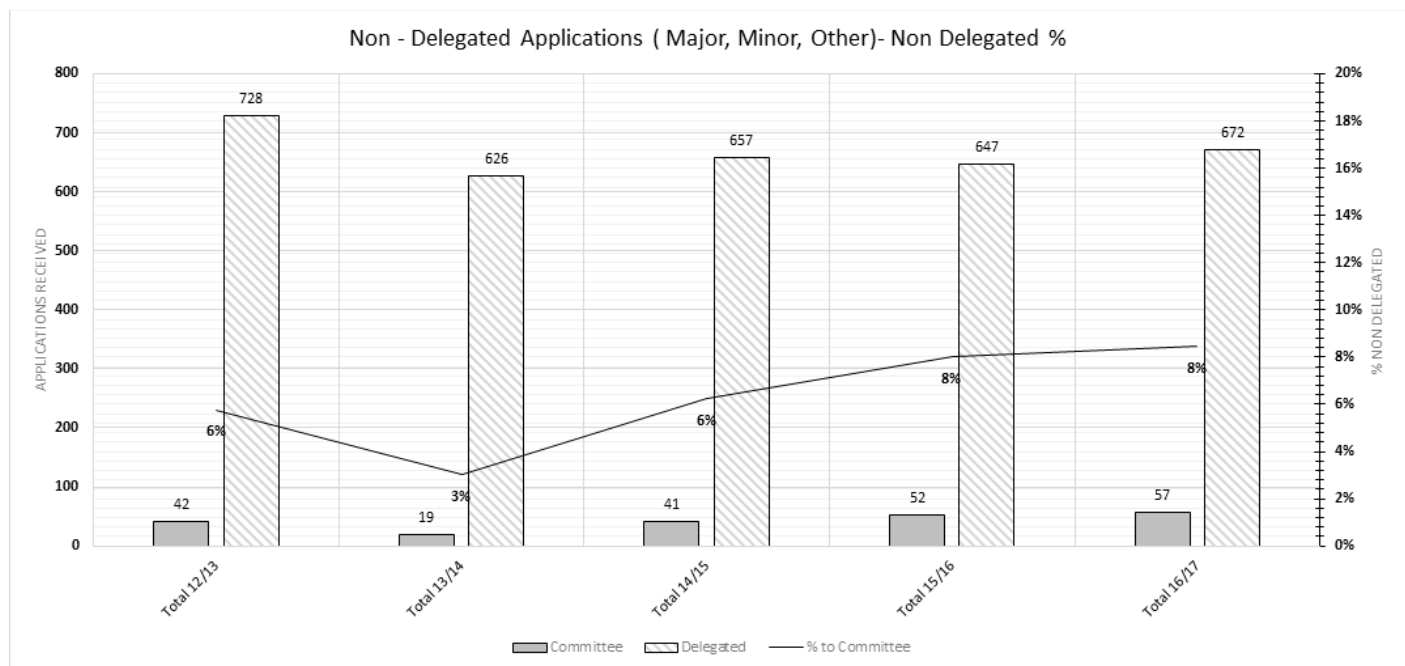
- 5.4 National guidance, in the form of the planning practice guidance states that: "It is in the public interest for the local planning authority to have effective delegation arrangements in place to ensure that decisions on planning applications that raise no significant planning issues are made quickly and that resources are appropriately concentrated on the applications of greatest significance to the local area. Local authority members are involved in planning matters to represent the interests of the whole community and must maintain an open mind when considering planning applications. Where members take decisions on planning applications they must do so in accordance with the development plan unless

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material considerations indicate otherwise. Members must only take into account material planning considerations, which can include public views where they relate to relevant planning matters. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid material planning reasons.”

5.5 Delegation of routine applications and decisions on planning matters to officers has been consistently recommended in official and professional good practice advice as a means of making the development management system more efficient. Guidance suggests that planning committees should focus on the more complex and significant applications and leave smaller, straight forward matters to be delegated to officers. Government suggests that councils should aim to have 90 – 95% of applications dealt with under a scheme of delegation. The table and graph below show that, since the changes to the scheme of delegation in July 2014, the percentage of applications that the Planning Committee has determined has increased but is still within the good practice levels. The figures shown are for major, minor and householder applications:

Year	2012/13	2013/14	2014/15	2015/16	2016/17	Q1 2017/18
Committee	42	19	41	52	57	15
Delegated	728	626	657	647	672	162
Committee %	6%	3%	6%	8%	8%	9%
Delegated %	94%	97%	94%	92%	92%	91%



Planning scheme of delegation – approaches elsewhere in Dorset and PDP proposed changes in Purbeck

5.6 The PDP report about the planning scheme of delegation included an appendix setting out what goes to planning committees in councils across Dorset and the call in arrangements. The following table summarises what appears good practice and not so good practice from elsewhere in Dorset; the officer recommendations for the PDP; and the PDP’s proposal following discussion at the meeting:

Examples from elsewhere in Dorset	Officer Proposal for Purbeck PDP	PDP proposal following discussion
Always referring an application to Committee where recommendation conflicts with decision previously made by committee for similar application on same site (Dorset Councils Partnership)	Add this to Purbeck District Council's scheme of delegation	Add this to Purbeck District Council's scheme of delegation
Head of Planning makes final decision in relation to requests to refer items to Planning Committee (Dorset Councils Partnership)	Remain with current approach in Purbeck where final decision rests with Councillors (Chair or Vice Chair of Planning Committee) and not officers	Change the scheme of delegation to enable automatic referral of a planning application for consideration by the Planning Committee if three councillors representing the Ward in which the development is proposed or adjacent Wards request it. The Councillors must provide the planning reasons for the referral (see Appendix 2 for information about material planning matters)
Councillor request for referral always referred with no review mechanism (East and Christchurch but reviewing this to give discretion to Planning Committee Chairman)		
Ward Councillors only able to request referral to Planning Committee for applications in their ward (Bournemouth)		
Councillors wishing to refer an application must first discuss the application with the case officer (Poole)	Add this to Purbeck District Council's scheme of delegation	Add this to Purbeck District Council's scheme of delegation
Automatic referral if a certain number of representations contrary to recommendation received (5 East, 12 Christchurch, 10 Bournemouth – East and Christchurch reviewing)	Remain with current approach of not linking to volume of objection. Volume of representation is not linked to material planning grounds and is open to manipulation by both objectors and supporters.	Remain with current approach of not linking to volume of objection. Volume of representation is not linked to material planning grounds and is open to manipulation by both objectors and supporters.

Planning enforcement management information currently provided for councillors

- 5.7 The management information that councillors currently receive in relation to planning enforcement matters is set out below.
- **New enforcement cases received this week** – a summary of all the enforcement investigations opened that week in response to allegations / inquiries.
 - **Monthly status of enforcement cases currently open and not yet resolved** – a summary of all the current open enforcement cases.
 - **Monthly status of enforcement cases where enforcement action has been taken** – a summary of all the current open enforcement cases where the Council has taken action.
 - **Enforcement cases closed this month** – a summary of all the enforcement cases that the Council has closed this month.
- 5.8 In addition to the management information set out above, the General Manager - Planning and Community Services provides a quarterly performance update report to the Planning Committee. This includes a range of performance information about the planning service and includes an enforcement section. This section provides an overview of the entire caseload including the total number of open enforcement cases, the number of cases opened, actioned and closed in the quarter – along with the reasons for the cases that have been closed.
- Current procedure to request Planning Committee consider proposed planning enforcement action**
- 5.9 When officers are proposing to take enforcement action, they email all councillors who then have 6 calendar days from receiving the email to request that the Planning Committee decide whether the action should be taken or not. If they do this, a meeting would take place between the councillor that has requested the referral, the General Manager - Planning and Community Services or the Development Manager, the case officer and the Chair or Vice Chair of Planning Committee. At this meeting, attendees would discuss the issues and the reasons for the proposed referral. The Chair or Vice Chair would decide whether to refer the proposed enforcement action to the Planning Committee.
- 5.10 Since the Council meeting in April 2015, officers have advised councillors of 4 occasions when they intended to take enforcement action. To date, no councillor has requested that any of these cases be referred to Planning Committee. The PDP concluded that in the matters of planning enforcement, the key is for good communication between officers and ward councillors and it is not appropriate for the Planning Committee to get involved in decisions relating to individual planning enforcement cases.

Current arrangements in other Dorset councils for involving councillors in planning enforcement

5.11 The following table summarises what involvement councillors have in planning enforcement elsewhere in Dorset.

Dorset Councils Partnership (West Dorset; Weymouth & Portland; North)	Officers notify all ward members when an enquiry received in their area. Once the initial investigation is completed, they advise ward members as to whether it is something officers will investigate or not. Officers regularly update ward members at the various stages of a case until it is completed. Quarterly performance report includes an update on case numbers; types of cases and number of cases opened and closed.
East Dorset District Council and Christchurch Borough Council	Currently no arrangements in place to involve councillors in planning enforcement and no formal provision of management information. Provide informal confidential updates to ward members. Plan to review this to provide quarterly update as an exempt paper at planning committee.
Bournemouth Borough Council	Members don't have any direct involvement in planning enforcement and there is no call in process for enforcement. Officers provide a monthly enforcement update in order to keep members in the loop on progress.
Borough of Poole Council	Members don't have any direct involvement in planning enforcement. In theory they can call anything in but in practice enforcement matters do not go to Committee.

Appendices:

1 - Proposed changes to the scheme of delegation

2 - Material planning matters

Background papers:

There are none.

For further information contact:-

Bridget Downton, General Manager - Planning and Community Services

Amended scheme of delegation – draft – v0.3

Planning applications

to decide all applications (including imposing conditions and reasons for refusal where necessary) for permission to carry out development or change of use including those accompanied by or requiring a planning obligation; reserved matters applications; to modify or discharge planning obligations for affordable housing for screening and scoping opinions; for listed building consent; advertisement consent; to renew extant permissions; prior notification applications; certificates of lawfulness for existing/proposed use or development or works; to remove or modify planning conditions attached to an existing consent (including minor material and non-material amendments); for slurry stores (except for those on Dorset County Council-owned farms) and the making of Tree Preservation Orders EXCEPT: applications:

- (a) for operational development or a material change of use within the settlement boundaries of Swanage, Upton and Wareham resulting in 5 or more dwellings (Use Class C3) (irrespective of the number of dwellings that already exist on the site); or for gypsy/traveller sites of 5 or more pitches; or any development with an area of 0.5ha or more;
- (b) for operational development or a material change of use anywhere else in the District resulting in 2 or more dwellings (Use Class C3) (irrespective of the number of dwellings that already exist on the site); or for gypsy/traveller sites of 2 or more pitches; or any development with an area of 0.3ha or more;
- (c) for operational development or a material change of use resulting in any commercial development (Use Classes A1-5 or B1, B2 or B8) exceeding 500m² outside of Safeguarded Employment Land or Town and Local Centres as defined in the most up-to-date Local Plan;
- (d) for new schools including consultations on any such development;
- (e) for operational development or a material change of use that would require referral to the Secretary of State in accordance with the Town and Country Planning (Consultation) Direction 2009 or any such other Direction amending or replacing that Direction as having a significant impact upon the openness of the Green Belt or development consisting of or including retail (Use Class A1), leisure (Use Class D2) or office (Use Class A2) use outside Town and Local Centres that is not in accordance with the most up-to-date Local Plan;
- (f) for two or more wind turbines;
- (g) for solar farms that are proposed to generate 50KW or more, or with an area of 0.5ha or more;
- (h) where the applicant or agent is a councillor or the spouse or civil partner of a councillor;
- (i) where the applicant or agent is an officer of the Council or the spouse or civil partner of an officer of the Council;
- (j) for operational development or a material change of use where officers intend to decide the application contrary to a previous decision made by the Planning Committee in respect of a similar application on the same site; or in conflict with a representation from a parish or town council, an immediate neighbour or statutory consultee; and in the professional opinion of the General Manager Planning and Community Services or the Development Manager, the representation relates to a material planning consideration and consideration of the planning matters is finely balanced;

- (k) for operational development or a material change of use where any three councillors representing the Ward in which the development is proposed or adjacent Wards have, within 28 days of the first e-mail giving notice of the application to councillors, requested in writing with planning reasons to the General Manager Planning and Community Services or the Development Manager that the Planning Committee consider the application. Prior to making the request the councillors must have discussed the application with the Development Manager or the case officer. NOTE: to avoid any doubt a written request will be considered to have been made although it is on the basis that the application is only to be considered by the Planning Committee if the case officer intends to decide the application in a particular way.
- (l) for any application where the operational development or a material change of use of land that is subject of the application is owned by the Council;
- (m) for approval of reserved matters relating to design, access and layout where the Planning Committee determined the outline application; and
- (n) for major development as defined in Article 2(1) of the Town and Country Planning (Development Management Procedure) Order 2010.

Enforcement action

to issue and serve an enforcement notice, a breach of condition notice, or stop notice or temporary stop notice where there is a breach of planning control (including the power to withdraw any enforcement notice and not to take enforcement action). Officers will usually inform local members before the above power is exercised. EXCEPT where

- ~~any councillor has within 6 working days of the notification of the intention to take action publication of the weekly list has requested in writing to the General Manager Planning and Community Services or the Development Manager that the Planning Committee consider the expediency of the proposed enforcement action; and~~
- ~~the General Manager Planning and Community Services or the Development Manager together with the Chair and/or the Vice Chair of Planning Committee have met with the councillor to discuss the expediency of taking the proposed enforcement action; and~~
- ~~the Chair or the Vice Chair (as appropriate) agreed that the Planning Committee should consider the expediency of taking enforcement action.~~

Material Planning Considerations

When a decision is made on a planning application, only certain issues are taken into account; these are often referred to as ‘material planning considerations’.

MATERIAL PLANNING CONSIDERATIONS:

Issues that may be relevant to the decision

(There may exist further material planning considerations not included here)

- Local, strategic, national **planning policies** and policies in the Development Plan
- Emerging new plans which have already been through at least one stage of public consultation
- **Pre-application planning consultation** carried out by, or on behalf of, the applicant
- **Government and Planning Inspectorate requirements** - circulars, orders, statutory instruments, guidance and advice
- **Previous appeal decisions** and planning inquiry reports
- Principles of **Case Law** held through the Courts
- **Loss of sunlight** (based on Building Research Establishment guidance)
- **Overshadowing/loss of outlook** to the detriment of residential amenity (though not loss of view as such)
- **Overlooking** and **loss of privacy**
- **Highway issues:** traffic generation, vehicular access, highway safety
- **Noise or disturbance** resulting from use, including proposed hours of operation
- **Smells and fumes**
- Capacity of **physical infrastructure**, e.g. in the public drainage or water systems
- Deficiencies in **social facilities**, e.g. spaces in schools
- Storage & handling of **hazardous materials** and development of **contaminated land**
- Loss or effect on **trees**
- Adverse impact on **nature conservation** interests & biodiversity opportunities
- Effect on listed buildings and conservation areas
- **Incompatible or unacceptable uses**
- **Local financial considerations** offered as a contribution or grant
- **Layout and density of building design**, visual appearance and finishing materials
- Inadequate or inappropriate **landscaping** or means of enclosure

The weight attached to material considerations in reaching a decision is a matter of judgement for the decision-taker however the decision-taker is required to demonstrate that in reaching that decision that they have considered all relevant matters.

Generally greater weight is attached to issues raised which are supported by evidence rather than solely by assertion.

If an identified problem can be dealt with by means of a suitable condition then the Local Planning Authority is required to consider this rather than by issuing a refusal.

NON-MATERIAL PLANNING CONSIDERATIONS:

Issues that are not relevant to the decision:

(There exist further non-material planning considerations not included in this list)

- **Matters controlled under building regulations** or other non-planning legislation e.g. structural stability, drainage details, fire precautions, matters covered by licences etc.
- **Private issues between neighbours** e.g. land/boundary disputes, damage to property, private rights of access, covenants, ancient and other rights to light etc.
- **Problems arising from the construction period** of any works, e.g. noise, dust, construction vehicles, hours of working (covered by Control of Pollution Acts).
- Opposition to the **principle of development** when this has been settled by an outline planning permission or appeal
- **Applicant’s personal circumstances** (unless exceptionally and clearly relevant, e.g. provision of facilities for someone with a physical disability)
- **Previously made objections/representations** regarding another site or application
- **Factual misrepresentation of the proposal**
- Opposition to **business competition**
- **Loss of property value**
- **Loss of view**

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