

Audit and Governance Committee

24 June 2024

Planning and Licensing Committees

For Recommendation to Council

Cabinet Member and Portfolio:

Cllr N Ireland, Leader of the Council

Local Councillor(s): All Councillors

Cllr

Executive Director:

J Mair, Director of Legal & Democratic

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Report Status: Public

Brief Summary:

Planning Delegations

Currently, if a Dorset Council ward member submits a representation or a parish or town council submits a representation contrary to the officer's proposed recommendation, a nominated officer decides, in consultation with the relevant planning committee chair, vice-chair and ward member whether the application should be referred to the planning committee (instead of the application being decided by an officer with delegated powers).

In order to give ward members and parish and town councils a stronger voice in triggering the referral of an application to a planning committee changes are proposed to the Officer Scheme of Delegation. If approved these changes would result in all applications for major development to which a Dorset Council ward member or a town or parish council submits a representation which is contrary to the officer's proposed recommendation being referred to planning committee for decision. For other development not already subject to an automatic committee

referral, it is proposed that where a Dorset Council ward member or a parish or town council has made a representation contrary to the officer's proposed recommendation, the decision to refer an application to committee would rest with the relevant planning committee chair and/or vice chair, in consultation with the relevant ward member(s), as part of agenda management. If the chair and vice-chair disagree it is suggested that the chair's view prevails. It is also suggested that the Council's own applications and applications on Council land are treated in the same way as other applications, rather than being automatically referred to committee.

Licensing Committees

The Council has licensing functions under the Licensing Act 2003 and the Gambling Act 2005 and different additional licensing functions under other legislation. As such, it would be appropriate to have two separate committees, one dealing with Licensing Act 2003 and Gambling Act 2005 matters and one dealing with all other licensing matters.

Recommendation:

1. That Full Council is asked to amend the Officer Scheme of Delegation in the Constitution to change the process for determining which planning applications are referred to the planning committees (as shown with tracked changes in Appendix 1)
2. That the Committee considers the proposed amendments to the Officer Scheme of Delegation for referring planning applications to the planning committees shown highlighted and with tracked changes in Appendix 1 and resolves whether to ask Full Council to also make those changes
3. That Full Council is asked to amend the Protocol for Members and Officers on Planning Procedures in the Constitution by amending paragraph 8.2 as set out Appendix 1.
4. That any changes to the Officer Scheme of Delegation take effect on 25 July 2025.
5. That Full Council agrees to amend the Constitution by renaming the Licensing Committee as the Licensing and Gambling Acts Committee, creating a separate General Licensing Committee and substituting Articles 8.28 and 8.29 of the Constitution with new Articles 8.28-8.31 as set out in Appendix 2.
6. That the Chair, Vice-Chair and other Members of the Licensing and Gambling Acts Committee are also appointed to the General Licensing Committee

7. That sub-committees of the two licensing committees can be formed as and when needed from the membership of the relevant licensing committee.

Reason for Recommendation:

- 1, 2 & 3 To enable the Council to be a more open organisation and give ward members and parish councils a greater involvement in deciding which planning applications are considered by the planning committees
- 4 So that and changes to the Officer Scheme of Delegation do not affect any consultations under the Officer Scheme of Delegation which have already begun at the time of Full Council.
- 5&6 It is appropriate to have two separate licensing committees, one dealing with the Licensing Act 2003 and Gambling Act 2005 and one to deal with other licensing matters
- 7 to allow greater flexibility in appointing Members of the two licensing committees to licensing sub-committees.

1. Planning Delegations

- 1.1 The Council received 4209 planning applications (not including other applications such as for pre-application advice or notifications under permitted development rights) in the last year (to 31 March 2024). The Constitution sets out which planning applications are determined by the planning committees and which are determined by officers. Even if an application is delegated to officers, officers can nevertheless refer the application to a planning committee if they consider it appropriate.
- 1.2 The current criteria for deciding which applications are decided by the planning committees is set out in paragraph 134 of the Officer Scheme of Delegation. The first broad category of applications which are decided by the planning committees is where the application is made by a Member, a Chief Officer, an officer involved in processing or deciding planning applications, or by a spouse/civil partner of one of those people, or whether the application is on land owned or leased by any of those people or their spouse/civil partner. It is not proposed to change that position.

- 1.3 The second broad category is where a ward member or parish/town council has made a representation on an application containing a material planning consideration and which, in the case of a town/parish council is contrary to the proposed officer recommendation. Currently, the ward member and relevant committee chair and vice-chair are consulted about whether the application should be referred to the relevant planning committee by the Proper Officer (Head of Planning, Service Manager for Development Control and Enforcement or relevant Area Manager). Following that consultation, the Proper Officer decides whether to refer the application to the planning committee. It is suggested that this referral process is changed as summarised in paragraph 1.7 and in detail in Appendix 1.
- 1.4 The third broad category is where the application is made by the Council or is on Council owned land. Currently, all of these applications are referred to the planning committees. It is suggested that the Council's own applications are treated in the same way as other applications as set out in paragraph 1.6 and Appendix 1.
- 1.5 Consideration has also been given to whether all applications which are contrary to the Development Plan and where the officer is recommending approval should be referred automatically to the planning committees. Officers consider that the benefits of doing that are less clear and so the Committee is asked to consider the issues set out in paragraph 1.8 before deciding whether to recommend the highlighted changes in Appendix 1 to Full Council.
- 1.6 It is proposed to move to a more member-led referral process to the planning committees. First, all applications for major development (10 or more houses, building of 10,000 sq m or more, sites of 1ha or more, and all minerals and waste development) would be referred to planning committees if a ward member or town or parish council has made a representation which is contrary to the officer's proposed recommendation. For all other planning applications falling under paragraph 134 of the Officer Scheme of Delegation, if a ward member, town or parish council submit a representation within the 21 day consultation period which contains material planning considerations and is contrary to the officer recommendation, the relevant committee chair and/or vice chair would be able to refer the application to committee.
- 1.7 The Council has set time periods for making decisions on planning applications. The Government sets targets that a certain percentage of

applications must be decided within that time period, or within an agreed extension of time. If the Council does not meet the target the Government can remove the Council's power to decide planning applications referring them instead to the Planning Inspectorate (known as 'special measures'). There is also a risk of fee refund if the application is not determined within 16 or 26 weeks, and a risk of non-determination appeals if extensions of time are not agreed. As a result, it is proposed to keep the 5 day response time for Chairs and Vice-Chairs to decide that an application should be referred to committee failing which the decision can be taken by officers.

- 1.8 Currently, only applications which are considered to be contrary to the development plan as a whole and are required to be referred to the Secretary of State are automatically referred to Committee. An alternative could be to automatically refer these applications to planning committee if the officer is recommending approval. However, this approach could lead to ambiguity as it is often a question of planning judgement as to whether the application is contrary to the development plan. It could also lead to a delay in decision making with the consequences as set out in paragraph 1.7 and resource implications for the Planning Service if a greater number of applications are referred to Committee. Officers consider that the proposed changes set out in paragraph 1.6 without the highlighted changes in Appendix 1 provide sufficient transparency to ensure that applications which are contrary to the development plan are referred to planning committee where appropriate.

2. Licensing Committees

- 2.1 The Council has licensing functions under the Licensing Act 2003 and the Gambling Act 2005 and licensing functions under different legislation, for example taxi licensing. Advice has been received that it would be appropriate to have two separate committees, one dealing with Licensing Act 2003 and Gambling Act 2005 matters and one dealing with all other licensing matters.
- 2.2 Since the formation of Dorset Council, the Council's Licensing Committee has exercised all of the Council's licensing functions. However, given the advice received, it is recommended that the Licensing Committee's functions are split so that they are in line with the Licensing Act 2003 requirements.

- 2.3 There is no requirement for the two committees to have different membership. As a result, it is recommended that the members of the Licensing Committee (renamed the Licensing and Gambling Act Committee) are also appointed to the new General Licensing Committee. That will mean that there is no need to train additional members to sit on the new committee. It also means that both committees can meet on the same day with one committee meeting following the other. That will mean there is no additional pressure on Members' diaries.

3. Licensing Sub-Committees

- 3.1 Currently the Constitution requires that named members of the Licensing Committee are appointed to licensing sub-committees annually at the first Licensing Committee held after the annual Council meeting. It also requires sub-committees to sit in rotation where more than one is appointed.

- 3.2 Licensing sub-committees are held to consider applications and licence reviews which often have to be held at short notice to comply with statutory timescales. As a result, members of the sub-committees are often not available and substitutes have to be found.

- 3.3 It is therefore proposed that sub-committees of the two licensing committees can be constituted from the membership of the relevant licensing committee as and when a sub-committee is needed to hear a licensing matter. The proposed change to the Constitution is set out in Appendix 2.

4. Financial Implications

There are no financial implications associated with this report

5. Natural Environment, Climate & Ecology Implications

There are no climate implications associated with this report

6. Well-being and Health Implications

There are no well-being and health implications associated with this report

7. Other Implications

There are no other implication associated with this report

8. Risk Assessment

8.1 **HAVING CONSIDERED:** the risks associated with this decision; the level of risk has been identified as:

Current Risk: Low

Residual Risk:Low

9. **Equalities Impact Assessment**

This report does not impact on any equality and diversity issues

10. **Appendices**

10.1 Appendix 1 – proposed changes to paragraph 134 of the Officer Scheme of Delegation and Protocol for Councillors and Members dealing with Planning Matters

10.2 Appendix 2 – proposed changes to Article 8 of the Constitution for Licensing Committee

11. **Background Papers**

None