

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

11 JULY 2013

**REPORT OF
CORPORATE
MANAGEMENT TEAM**

COUNCIL DECISION/CABINET

**Portfolio Regeneration and Transport – Lead Cabinet Member Councillor Michael Smith
ALTERATION TO THE SCHEME OF DELEGATION**

1. Summary

As Members may be aware the Government has introduced new permitted development rights for a 3 year period which require prior notification to the Local Planning Authority if the applicant has not been formally notified of a decision by the last day of the statutory period for determination.

The Council's current scheme of delegation authorises the Head of Planning to determine applications which do not generate more than 5 individual letters of representation contrary to the officer recommendation. There is genuine concern that there may be situations arising under the new prior notification process where more than 5 individual letters of representation are received contrary to the officer recommendation but the application cannot be reported for determination by the Planning Committee before the expiry of the statutory period for determination and the deemed approval provisions would take effect.

This report therefore examines the new issue and proposes alterations to the scheme of delegation to make it possible for prior notification applications to be determined lawfully within the statutory time period and prevent prior approval being obtained via the deemed approval provisions.

The issues have been considered by the Planning Committee on 29th May 2013 when Members supported the proposed alteration to the scheme of delegation subject to the situation being monitored and reported back to the Planning Committee

2. Recommendations

1. *That the Head of Planning be authorised to determine all applications for prior notification and the proposed change to the scheme of delegation be incorporated into the Council's Constitution*

3. Reasons for the Recommendations/Decision(s)

The existing situation if allowed to remain unchanged would be clearly contrary to the rules of natural justice if the Local Planning Authority were unable to decide a prior notification application within the statutory time period. This would be totally unsatisfactory for neighbours if there representations cannot be properly considered.

The Secretary of State for Communities and Local Government has indicated that it is up to the Local Planning Authority to determine how it wishes to determine prior notification applications.

4. Members

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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COUNCIL DECISION/CABINET DECISION

ALTERATION TO THE SCHEME OF DELEGATION

SUMMARY

As Members may be aware the Government has introduced new permitted development rights for a 3 year period which require prior notification to the Local Planning Authority the applicant has not been formally notified of a decision by the last day of the statutory period for determination.

The Council's current scheme of delegation authorises the Head of Planning to determine applications which do not generate more than 5 individual letters of representation contrary to the officer recommendation. There is genuine concern that there may be situations arising under the new prior notification process where more than 5 individual letters of representation are received contrary to the officer recommendation but the application cannot be reported for determination by the Planning Committee before the expiry of the statutory period for determination and the deemed approval provisions would take effect.

This report therefore examines the new issue and proposes alterations to the scheme of delegation to make it possible for prior notification applications to be determined lawfully within the statutory time period and prevent prior approval being obtained via the deemed approval provisions.

The issues have been considered by the Planning Committee on 29th May 2013 when Members supported the proposed alteration to the scheme of delegation subject to the situation being monitored and reported back to the Planning Committee

RECOMMENDATION

- 1. That the Head of Planning be authorised to determine all applications for prior notification and the proposed change to the scheme of delegation be incorporated into the Council's Constitution.***

DETAIL

- To outline proposals for a revision to the scheme of delegation

DELEGATION

Issue for consideration

- One of the current criteria for determining whether an application is delegated to officers is d) Those cases where there are more than 5 letters/emails by way of response which are

contrary to the recommendation of the case officer, with the exception of mobile phone mast applications where they remain delegated regardless of the number of objections received.

3. As Members may be aware the Government has introduced new permitted development rights for a 3 year period which require prior notification to the Local Planning Authority if the applicant has not been formally notified of a decision by the last day of the statutory period for determination.
4. The Council's current scheme of delegation authorises the Head of Planning to determine applications which do not generate more than 5 individual letters of contrary to the officer recommendation. There is genuine concern that there may be situations arising under the new prior notification process where more than 5 individual letters of representation are received contrary to the officer recommendation but the application cannot be reported for determination by the Planning Committee before the expiry of the statutory period for determination and the deemed approval provisions would take effect.
5. This situation would be clearly contrary to the rules of natural justice if the Local Planning Authority were unable to decide a prior notification application within the statutory time period. This would be totally unsatisfactory for neighbours if their representations cannot be properly considered.
6. The Secretary of State for Communities and Local Government has indicated that it is up to the Local Planning Authority to determine how it wishes to determine prior notification applications.
7. The proposed change would still result in the officer scrutiny applied under the existing scheme of determination of applications under delegated powers as indicated below.

Signatures

8. Each application requires the signature of the case officer, and the Area Team Leader/Major Projects Officer from one of the other teams. During the course of a prior notification application, case officers will liaise with their own line manager to discuss the case and recommendation. Therefore to ensure consistency in decision making and for an independent view, another team leader must act as signatory on the delegated decision, i.e. they cannot sign off their own team members' decisions.

Refusals

9. Applications recommended for refusal, in addition to the 2 signatures above, will require to have a 3rd signature, that of the Development Services Manager to ensure consistent decision making across the teams and as a way of monitoring performance with regards to appeals.

CONCLUSION

10. It is therefore recommended that the Head of Planning is authorised to determine all applications for prior notification. The revised scheme of delegation will ensure transparency, probity, fairness and consistency in decision making, and lead to continued improvements in performance.

FINANCIAL IMPLICATIONS

11. Will not involve additional cost to the Council

LEGAL IMPLICATIONS

12. The existing situation would if allowed to remain unchanged be clearly contrary to the rules of natural justice if the Local Planning Authority were unable to decide a prior notification application within the statutory time period. This would be totally unsatisfactory for neighbours if their representations cannot be properly considered.

RISK ASSESSMENT

13. Low.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

14. As report.

EQUALITIES IMPACT ASSESSMENT

15. This report is not subject to an Equality Impact Assessment because it relates to responding to new planning legislation and its impact on the determination of new prior notification applications.

CORPORATE PARENTING

16. N/A

CONSULTATION INCLUDING WARD/COUNCILLORS

17. The Planning Committee

Corporate Director, Development and Neighbourhood Services

Contact Officer: Carol Straughan

Tel: 01642 527027

carol.straughan@stockton.gov.uk

Education related

No

Background Papers

Ward(s) and Ward Councillors

All

Property

N/A

Class A extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse,

Subject to

(c) the expiry of 42 days following the date on which the information referred to in paragraph (2) was received by the local planning authority without the local planning authority notifying the developer as to whether prior approval is given or refused.

Class J Development consisting of a change of use of a building and any land its curtilage to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order from a use falling within Class B1(a) (offices) of that Schedule

Subject to

(the expiry of 56 days following the date on which the application was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused

Class K . Development consisting of a change of use of a building and any land within its curtilage to use as a state-funded school, from a use falling within Classes B1 (business), C1 (hotels), C2 (residential institutions), C2A (secure residential institutions) and D2 (assembly and leisure) of the Schedule to the Use Classes Order

Subject to

the expiry of 56 days following the date on which the application was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused

Class M where the cumulative floor space of the building or buildings which have changed use under Class M within an original agricultural unit exceeds 150 square metres and does not exceed 500 square metres, Development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a flexible use falling within either Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes), Class B1 (business), Class B8 (storage or distribution), Class C1 (hotels) or Class D2 (assembly and leisure) of the Schedule to the Use Classes Order.

Subject to

the expiry of 56 days following the date on which the application was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused