

Committee: **Planning Committee**

Date of meeting: **June 2023**

Report Subject: **Scheme of Delegation - Planning Committee**

Portfolio Holder: **Chair of Planning Committee and  
Cabinet Member Place and Regeneration**

Report Submitted by: **Service Manager Development & Estates**

Reporting Pathway						
Directorate Management Team	Corporate Leadership Team	Portfolio Holder / Chair	Scrutiny Committee	Cabinet	Council	Other (please state)
✓		✓			✓	<b>Constitutional Working Party and Planning Committee</b>

**1.0 Purpose of the Report**

1.1 To review the scheme of delegation for decision making in Building Control and Planning insofar as it relates to the remit of Planning Committee.

**2.0 Scope and Background**

2.1 The scheme of delegation is an important document. It sets out which decisions are made by Planning Committee and those made at officer level. It is a living document and good governance requires the Council to review its operation to ensure the service operates efficiently.

2.2 The scheme of delegation was last reviewed in 2010 though revisions were made in the operation of planning enforcement in the intervening period. A more comprehensive review is now timely.

2.3 To reinforce this point, the planning service has recently been the subject of a Wales Audit Office review. The scheme of delegation was highlighted as an area in urgent need of further consideration. This is a point I will pick up later in the report.

2.4 The scheme of delegation forms part of the Council's constitution. Any changes will therefore require Council approval. It is the intention to present the suggested changes first to Planning Committee and incorporate any comments/revisions before reporting to the Council.

2.5 The suggested changes to delegation in this report fall into three categories.

- i. Updates to reflect legislative changes since the last review.
- ii. Additions identified as omissions in the previous version.
- iii. Changes to the scheme in the interests of efficient decision making.

### 3.0 **Options for Recommendation**

#### 3.1 **Option 1 - Do nothing.**

Members are asked to consider the scheme of delegation as it currently operates. If they are of the opinion that no change is required, the scheme will continue to be applied as currently written.

#### 3.2 **Option 2 – Approve the changes set out in this report (preferred option)**

I have attached the suggested new scheme of delegation for Members information. The document includes 12 amendments which are highlighted and numbered for ease of reference. I will deal with each in turn. Issues raised in discussions with WAO are included in the proposed changes.

#### 3.3 **Revision 1 – Addition of Preliminary Advice Service**

The preliminary advice service is one which has grown in importance since the last review. There are two schemes in operation: the statutory service which applies to all of Wales. Secondly a locally adopted scheme which provides a more detailed service and covers 99+% of enquiries we receive.

3.4 This is an important fee generating service; it provides service users with information such as the planning history of a site, confirmation whether planning permission is required, what information will be necessary to be submitted with an application and a view on whether a development is likely to find favour. The advice given is the officer's professional view and not binding on the Council.

#### 3.5 **Revision 2 – Addition of Consultation by Neighbour Council**

We are frequently consulted by neighbouring Councils on planning applications that have cross boundary implications. In the main, these are dealt with at officer level though there is provision within the scheme for reporting to Planning Committee if a scheme raises issues of wider public interest.

#### 3.6 **Revision 3 – Addition of cases where s106 is required.**

Section 106 agreements are not limited to major schemes but are sometimes required on relatively minor schemes. Further, existing legal agreements often require amendment. As the previous scheme of delegation was silent on the issue, all these applications are currently required to be presented to Planning Committee. It is proposed that officers can decide applications where a s106 is required unless other provisions in the delegation document dictate otherwise such as Member call in, or if it relates to a major residential application or the case is deemed to be of wider public interest.

#### 3.7 **Revision 4 – Addition of s70A Powers**

Following a refusal of planning permission, it is open to an application to re-submit the application incorporating changes to overcome the reasons for previous refusal.

3.8 The Planning Acts provide the power to refuse to register a subsequent second application if no meaningful attempt is made to revise the scheme to address the reasons for refusal in what may be an attempt to obtain planning

permission for essentially the same scheme. This is a rarely used power, but it is important given the timescales involved that a quick decision is made where this provision may apply. The right to submit an appeal is unaffected.

3.9 Revision 5 – Amendment to Major Applications

Under the present scheme of delegation, all major applications are currently required to be reported to Planning Committee. Our experience is that applications that fall into the major category often do not raise issues of wider concern. A good example is large commercial/industrial buildings on our industrial estates where it is an extension to an existing use. Where consultees have not raised concern, the public are supportive (or silent) and Ward Members content with the details, presenting these to Planning Committee introduces unnecessary delay.

3.10 The proposal is therefore to amend this category to require only major residential schemes to Planning Committee. I can reassure Members if the scheme involves a new industrial process that raise wider issues, then the application would be reported to Committee.

3.11 Revision 6 – Amendment to Departures

It is appropriate for Planning Committee to consider applications where a recommendation to approve an application that is against a policy in the LDP. However, there are often cases where this a minor and justified departure from adopted policy. An example of this is the issue of non-retail uses in Brynmawr Town Centre. Planning Committee made a number of decisions in recognition that the retail policy from a plan adopted in 2012 was out of date and no longer applicable. Yet every similar application that came forward subsequently was required to be presented to Members as the previous scheme of delegation did not provide flexibility.

3.12 It is suggested that the new scheme provides for officers to assess each case and come to a view on the nature and materiality of the departure and have regard to relevant issues such as recent decisions taken by Planning Committee. Minor and justified departures from the LDP could therefore be decided at officer level provided a strong and compelling case is made.

3.13 Revisions 7 – Addition of Non-Domestic Renewables

With the rise in this type of application, a new category has been added. This would provide for minor or non-controversial schemes such as solar panels on roofs to be delegated. However, larger schemes would be considered on their merits and the appropriate mechanism to make a decision agreed with the Chair.

3.14 Revision 8 – Addition of Local Impact Reports (LIR)

These are submitted in lieu of Development of National Significance (DNS). They are factual reports only and decided by an independent Inspector. The timescales for replying are extremely challenging given the monthly committee cycle. Failure to respond results in the loss of the significant fee. It is therefore proposed that the factual LIR response is delegated to officers.

Members are free to submit their own views on the merits of the DNS scheme direct to the Inspector provided they comply with the DNS timetable.

3.15 Revision 9 – Amendment to Member Call in.

Members are notified of planning applications in two ways. Firstly they receive notification individually of all applications in their ward. Secondly via the weekly list of all applications received across the Borough.

3.16 Any Member can call in any application provided they do so in writing and provide justification for the call in which must be based on relevant planning issues. The reason for this caveat is that the case officer can address the specific concerns in her/his committee report. Members are also reminded that this must happen within 21 days of the lists being published; this deadline has not previously been uniformly applied but going forward it will be.

3.17 The key change here is that once a written call-in request is received, it can only be approved by the Chair. This is to avoid unnecessarily placing items on the agenda where the reasons for call in are vague or deemed to relate to non-planning issues.

3.18 For the avoidance of doubt, the practise of pre-notifying members of a delegated refusal will stop. It was never written into the scheme of delegation. It developed though custom and practice. It introduces a further step for the case officer to negotiate when the opportunity for Members to express their views or call in the application has already been given via the initial 21-day notification.

3.19 Revision 10 – Applications made by Officers or Members

Some Council's require applications submitted by officers or Members to be presented to Planning Committee. This can also apply to close relatives. This provision does not currently apply in Blaenau Gwent.

3.20 The merits of either approach can be legitimately argued. In our case, we took the view that officers and Members should neither be advantaged or disadvantaged by virtue of their position and their application should be treated on its planning merit regardless of the identity of the applicant.

3.21 However, in the interests of transparency and picking up a likely recommendation of WAO in the recent audit that was discussed in interviews, it is proposed to change this provision meaning that any application made by an officer of the Development & Estates team, an officer directly involved in the process such as a highways or environmental health officer, or an elected Member will now be presented to Planning Committee.

3.22 I am concerned that to require all officers of the Council to be subject to this provision places an obligation of the planning case officer to establish the identity of the applicant (and their relations) in an organisation with thousands of employees. All in the context of the identity of a planning applicant not being material to the planning merits in 99.9% of cases. The proposed change in my opinion achieves a sensible balance.

3.23 Revision 11 – Addition of Extensions of Time

The culture of the service is always to negotiate amendments to make a scheme acceptable (or improved) rather than issue a refusal. Whilst this process often takes longer than the target 8 weeks, it provides a better service for customers and will often require an extension of time to be agreed with the applicant. If they do not agree, we can proceed to determine with the information before us at that time.

3.24 For completeness, this process has been added to the scheme of delegation and is proposed as an officer rather than Committee function given it is usually an administrative task.

3.25 Revision 12 – Responding to WG Consultations

It is common for Welsh Government to consult with stakeholders where there is a pending change to policy (e.g. Planning Policy Wales or TAN's), regulations and primary legislation. The nature of the consultation exercise is technical in nature and may raise Borough specific issues e.g. the TAN 15 flooding consultation. Whilst these can be reported to Planning Committee retrospectively and Councillors may respond directly to WG in their capacity as an elected Member, it is proposed that officers be empowered to provide a professional view on the merits of any changes on behalf of the Council.

3.26 Revision 13 – Addition of RIPA Authorisation

It is open to a number of services within the Council to carry out covert surveillance where there is a suspected breach of the appropriate law/regulations. This is under the Regulation of Investigatory Powers Act 2000 (RIPA).

3.27 Wherever possible, the planning enforcement service avoids the use of RIPA and is very rarely used. Instead, we will notify a landowner that a breach is suspected and a site will be monitored i.e. overt or open surveillance. In our experience, notifying a landowner that a site will be monitored often results in a positive outcome. However, on rare occasions RIPA will need to be invoked. The Council has an adopted policy which requires an independent senior officer outside of the service to review the application for authorisation. This process will remain unchanged but is included for transparency.

4.0 **Evidence of how this topic supports the achievement of the Corporate Plan / Statutory Responsibilities / Blaenau Gwent Well-being Plan**

The report deals with governance arrangements for decision making. Indirectly this relates to the aims of these corporate documents by providing for an efficient and responsive service.

5.0 **Financial Implications Against Each Option**

No direct impact other than a related point picked up at 6.2

6.0 **Risk including Mitigating Actions**

6.1 It has been a concern for some time that Planning Committee are considering minor and householder applications that would be better decided at officer

level. This would be a quicker outcome and allows for Committee time to be devoted to more important and strategic decision making.

6.2 A number of the refusals issued by Planning Committee (contrary to officer recommendation) have resulted in appeals. Not only does this generate additional work for which there is limited capacity, the Inspector has awarded costs against the Council for unreasonable and unsubstantiated refusals. Conversely, a significant number of permissions issues against officer advice has undermined a number of adopted policies in the LDP.

3 The intended outcome of this revised scheme of delegation is that in future, we only present householder and minor applications to Planning Committee on an exception basis to mitigate this risk, speed up the process and improve the consistency of decision making.

6.4 I am mindful of the perception that Members may feel disenfranchised from the decision-making process. This perception is based on a misunderstanding of the role of Planning Committee. It is quasi-judicial and in most circumstances the outcome of an application should be the same given that the merits of a scheme are assessed against the same policies and principles.

#### 7.0 **Legal**

The scheme of delegation forms part of the Constitution. It will require Council approval. Every Authority operates a different scheme to suit local circumstances. In preparing this report, I have reviewed the delegation arrangements in a number of other Welsh Councils.

#### 8.0 **Human Resources**

No direct implications. However, fewer applications being presented to Committee will help reduce the time taken to decide applications and lessen workload demanded by the Committee cycle and report writing.

#### 9.0 **Supporting Evidence**

9.1 I have compared our level of delegation against some neighbouring Councils. Unfortunately, Welsh Government have not published any comparative performance data for Wales for over a year. The latest data I can find is therefore for Q3 - October to December 2021. The data reveals the following:

9.2

<b>Council</b>	<b>% Planning decisions under delegated powers</b>
Blaenau Gwent	89%
Merthyr	100%
Caerphilly	98%
Torfaen	93%
Monmouthshire	95%

9.3 It is evident that our level of delegation is lower than our neighbours. Whilst not in itself a bad thing, this does support my view (shared by WAO) that not only is performance affected, but the agenda is also taken up by applications

that would be delegated elsewhere and therefore decided quicker. As a small authority, the proportion of minor and household applications is higher than in larger authorities, yet our Planning Committee continues to hear a greater proportion of cases.

- 9.4 The changes proposed are intended to increase this level of delegation to at least the low 90% in the interests of service efficiency. This may on occasion result in the cancellation of some Committees if suitable applications that meet the terms of the scheme are not ready to be presented.
- 9.5 One of the KPI's used by WG is the average number of days taken to decide applications. Speed of decision must be weighed against other measures of quality of service but it must be remembered that every applicant desires a speedy decision. This enables other aspects of a project to be planned such as buying materials, instructing contractors/builders and dealing with utilities.
- 9.6 The most recent published data reveals we take on average 88 days to decide each application. This compares favourably against an all-Wales average of 108 days and ranks us 11<sup>th</sup> out of 25 local planning authorities. However, 88 days (or over 12 weeks) is longer than the target of 56 days (8 weeks). Ideally, the average time taken should be reduced by at least 2-3 weeks.
- 9.7 The constraints of the Committee cycle mean that any application on the agenda is already over 8 weeks before it is considered. Upon receipt, every application usually takes a week to validate and register, then is the subject of consultation and publicity for at least 3 weeks. Committee meets once per calendar month (excluding May and August) with the deadline for reports typically 10 days prior. If any negotiation is required with the applicant/agent, this means a delay of at least a month which pushes up our average time taken indicator.
- 9.8 It is important for service users that we bring this figure down. The quickest Council was Merthyr who only took 55 days on average. It is no coincidence they delegated 100% of applications in that quarter. I am not proposing 100% delegation but a more reasonable and efficient use of resources and a compromise position where more straightforward applications are not placed on the Committee agenda.
- 10.0 ***Expected outcome for the public.***  
Quicker and more consistent decision making.
- 10.1 ***Involvement (consultation, engagement, participation)***  
This report seeks to update a document in need of review. It was also highlighted in recent discussions with WAO. Their final report is imminent.
- 10.2 I have discussed the issue with the Chief Legal Officer and key staff in the Planning Team.

- 10.3 It has also been discussed at length with the Chair of Committee and agreed to form part of a suite of documents that require updating.
- 11.0 ***Thinking for the Long term (forward planning)***  
Expectations of the service continue to increase. Having an efficient service with quick decision making is key to homeowners and businesses alike. Increasing the scheme of delegation is part of this process.
- 12.0 ***Preventative focus***  
To avoid unnecessary and avoidable delays in dealing with planning applications.
- 13.0 ***Collaboration / partnership working.***  
N/A
- 14.0 ***Integration (across service areas)***  
N/A
- 15.0 ***Decarbonisation and Reducing Carbon Emissions***  
No implications.
- 16.0 ***Monitoring Arrangements***  
The service will monitor the impact of any change via KPI's.