

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Director of Strategy & Governance (Monitoring Officer)

To: South Holland District Council Wednesday, 13 May 2020

(Author: Jacqui Berridge Lawyer)

Subject Coronavirus - Emergency Governance Measures

Purpose: To consider emergency Governance measures in relation to (i) the determination of planning applications; (ii) the determination of taxi licensing applications; (iii) virtual meetings; (iv) the peacetime emergency delegation to the Chief Executive; and (v) vacation of office by failure to attend meetings.

Recommendation(s):

1. Determination of planning applications

- (a) That the protocol/delegation for determination of planning applications, as set out in **Appendix A**, be approved initially for a temporary period of six months (unless subsequently extended by decision of the Council), following which the Council reverts to the existing delegations;
- (b) That, should the officer with delegated authority be unwilling to determine an application then applications be deferred so far as possible;
- (c) That, as soon as the Director of Place (or during Covid19 response the Executive Director of Commercialisation), in consultation with the Leader and the Chairman of the Planning Committee, considers that a meeting of the Planning Committee should be held (whether physically or virtually) appropriate applications be put to the Committee for determination;
- (d) That the potential for holding a virtual committee be kept under review, taking into account any Government announcements in respect of the current lockdown;
- (e) That the Constitution be amended as shown in **Appendix B**, such amendments to apply for 6 months up to but not including 13 November 2020, (unless subsequently extended by decision of the Council), the amendments then to be removed from the Constitution without a further report.
- (f) That, prior to any meeting of the Planning Committee that may be held whilst social distancing requirements remain in place, the Director of Place (or during Covid19 response the Executive Director of Commercialisation) be authorised to amend the rules and procedures for public speaking at the Committee in order to ensure suitable governance at a virtual meeting or to protect the health and safety of those physically in attendance.

2) Taxi licensing - That, initially for a period of 6 months (unless subsequently extended by decision of the Council), following which the Council will revert to the existing delegations, the Public Protection Manager, the Licensing and Business Support Manager and the Licensing Team Leader be given delegated authority to refuse, where considered appropriate, any application for a hackney carriage drivers' or vehicle licence, or a private hire drivers', vehicle or operators' licence under sections 60, 61 and 62 of the Local Government (Miscellaneous

Provisions) Act 1976 subject to:

- no officer with any interest in any matter taking any part in the determination of that matter; and
- consultation with the Chairman of the Licensing Committee; or
- if the Chairman of the Licensing Committee is not available, consultation with the Vice Chairman; or
- In the absence of the Chairman and Vice-Chairman, consultation with a member of the pool of 15 members who serve on the Licensing Committee where possible.

and where this may represent a departure from any existing licensing policy or procedure, such policy or procedure be deemed to be amended accordingly for the duration of this delegation.

- 3) Virtual meetings** - that the amendments to the Council's Standing Orders and Access to Information Procedure Rules, set out in **Appendix C**, be approved and the Constitution be amended accordingly, such amendments (with the exception of the proposed amendment to Standing Order no. 14.1) to apply up to but not including 7 May 2021, or such longer period as the law allows virtual meetings to be held, the amendments then to be removed from the Constitution without a further report.
- 4) Emergency delegation to the Chief Executive** - that the proposed amendments to the emergency delegation to the Chief Executive, shown in **Appendix D**, be approved, and the Constitution be amended accordingly.
- 5) Vacation of office due to failure to attend meeting** - that where any member fails throughout a period of six consecutive months to attend any meeting of the authority, including where an executive member fails to attend any meeting of the Executive or to take any executive decision, such failure be an approved absence due to the coronavirus peacetime emergency under section 85 of the Local Government Act 1972 and Standing Order no. 56, up to and including the date of the Annual Council meeting in 2021.

1.0 **DETERMINATION OF PLANNING APPLICATIONS**

1.1 **Background**

1.2 This report seeks to make temporary amendments to the scheme of delegation in order to ensure that as many planning applications as possible can be determined in a timely manner whilst maintaining member oversight. Whilst the delegations aim to reduce the number of applications that might need to be submitted to Planning Committee, they supplement but do not reduce or remove any of the powers of the Planning Committee to determine any application.

1.3 Part 3 Section F3 of the Council's Constitution includes a delegation to the Executive Director in charge of Planning and Development Control (currently the Executive Director - Place) to determine planning applications.

1.4 The current delegation allows the Director to approve and refuse planning applications in accordance with policy, other than Significant Applications which include those which:

- (i) officers may wish to approve which are contrary to policy or which raise novel or contentious planning issues
- (ii) are of particular sensitivity or have a significant impact locally
- (iii) have major economic, employment, leisure or environmental content
- (iv) are submitted by the Council or which relate to land in which the Council has an interest
- (v) are submitted by Members or Officers of the Council or which involve a member or officer interest

in which case the matter must be referred to the Planning Committee for determination. In addition, the Chairman's Panel must be consulted where there are irresolvable objections relating to material planning considerations and where ward members 'call-in' applications for determination by Planning Committee.

- 1.5 In accordance with the terms of the Constitution the Place Manager (South Holland), the Planning and Building Control Manager, the Development Manager, and the Principal Planning Officer have authority to determine planning applications that fall within the existing officer delegations.
- 1.6 **Proposed Temporary Delegation**
- 1.7 It is not currently possible to hold physical meetings of the Planning Committee. Even when lockdown is lifted, there will likely remain social distancing requirements and health risks to officers and members as well as members of the public/developers/objectors who may choose to attend a physical meeting.
- 1.8 Whilst the Government has recently introduced new Regulations enabling Councils to hold virtual meetings, which are discussed later in this report, there are risks associated with holding virtual meetings especially with Planning Committee:
- members need to be in attendance during the whole time that any application is being discussed to avoid legal challenge, and virtual attendance brings additional challenge in this area
 - developers and objectors have a right to speak at Committee and the element of fairness arising from this requirement must be maintained in some form.
 - applicants, agents and objectors may find it more difficult to follow the meeting, in a virtual environment.
 - planning is a very litigious area and we could see an increase in appeals (or Judicial Review applications) as a consequence of difficulties associated with virtual meetings
 - impeccable record keeping is required for virtual planning meetings.
- 1.9 Whilst officers are working towards being able to hold virtual Planning Committee meetings in a way that the identified risks can be appropriately managed, it is necessary to consider how to proceed, in the meantime, with determining planning applications that would normally be submitted to Committee. A proposed protocol/delegation is attached at **Appendix A**. This protocol/delegation extends the current delegation to enable officers to determine all planning applications, but requires officers first to consult the Chairman's Panel in certain circumstances prior to deciding whether any applications should be held for subsequent submission to the Planning Committee.
- 1.10 Officers at all times retain the right not to determine an application, and it may then be necessary to refund planning application fees if it becomes impossible to determine an

application during the 26 week timeframe permitted by Regulations without an extension of time being granted.

1.11 The proposals:

- are intended to be in force for 6 months, after which the Council will revert to the existing delegations unless it is considered appropriate to extend the amended protocol/delegations
- do not remove the ability of the Planning Committee to determine planning matters, as its powers will co-exist with any extended delegations
- extend the level of officer delegation but includes a 'filter' at Chairman's Panel for significant/contrary to policy applications, those where members or senior officers make the application or have an interest, those relating to Council land and those that are called in
- anticipate that some of the applications not suitable for immediate decision by an Officer, and which would ordinarily be referred to Planning Committee, will be subject to more extensive consultation with the Chairman's Panel than would ordinarily be the case
- assume that logistically it will be easier to hold virtual meetings of the Chairman's Panel, which is not a decision making body, rather than virtual decision-making meetings of the Planning Committee
- take into account procedural suggestions from various guidance including from the Planning Officers Society.

1.12 **Options**

1.13 To agree the proposed amended protocol/delegation detailed in **Appendix A**.

1.14 To propose alternative arrangements.

1.15 To do nothing. This is not considered appropriate. The Council must ensure that planning applications continue to be determined until such time as it is considered safe to hold physical of the Planning Committee or it is considered possible to hold a virtual meeting with the risks appropriately managed.

1.16 **Reasons for Recommendations**

1.17 It is necessary to consider how, so far as possible, to continue determining planning applications during the crisis and it is considered that the amended protocol/delegation provides sufficient flexibility.

1.18 The proposed delegation/protocol ensures that the Chairman's Panel has an extended consultative role where officers have wider delegated authority.

1.19 The new delegation/protocol is temporary and does not prevent the Planning Committee from determining applications. Where the Panel is consulted, the officer with delegated authority must give significant weight to the Panel's views.

1.20 **Expected Benefits**

1.21 The proposed amendments will help to ensure that delays to applications are minimised, and provide clarity to members and members of the public and help to reduce the risk of legal challenge.

1.22 **Constitutional & Legal Implications**

- 1.23 Under section 101 of the Local Government Act 1972 the full Council may authorise officers to discharge any functions. The existing delegation in the Constitution is not wide enough to allow determination of all planning applications during the current crisis. There are no legal impediments to the proposed amended delegations, but officers will, as is usual in any delegation, retain the right to refer applications to the Planning Committee where they consider this necessary, notwithstanding that it may be some time before such applications can be so determined.
- 1.24 Where applications are determined otherwise than by a physical meeting of the Planning Committee, developer and objector submissions will be made only by advance submission through the usual formal consultation process and (in the case of any virtual meeting) potentially through audio/visual pre-recorded submissions.

1.25 **Financial Implications**

- 1.26 Where any application is deferred for consideration by the Planning Committee the developer may be able to secure a refund of fees if the application is not determined within 26 weeks, unless the developer agrees to extend the determination period. It is anticipated that in most instances developers will agree to extensions of time so that outstanding applications can be submitted to the Planning Committee as quickly as possible once it is safe to hold a physical meeting or that a virtual meeting can held with the risks appropriately managed.

1.27 **Reputational Implications**

- 1.28 It is anticipated that this report will go as far as possible in ensuring that developer applications are determined in the most efficient manner possible during what is likely to be a very difficult period.

1.29 **Risk Management Implications**

- 1.30 In the absence of adopting a new approach, there is a risk of serious delay to applications that would ordinarily go the Planning Committee, and the associated risks of challenge for fee refunds and non-determination. However, on balance, it is considered that the Council should not organise a virtual planning committee for so long as it is considered that the risks inherent in a virtual regulatory meeting (particularly around risk of drop-out and ensuring fairness of the process such as access to objectors, ward members, parishes, etc.) outweigh the risks inherent in delay.
- 1.31 Should the officer with delegated authority, following consultation with the enhanced form of the Chairman's Panel, decide that a planning application should be deferred until a physical Planning Committee is able to meet, there could be a challenge on the grounds that the Council now has the means lawfully to hold a virtual planning committee. Clearly this risk must be balanced against the risks associated with holding a virtual Planning Committee.
- 1.32 It is considered that this report mitigates, so far as possible, risks to the local economy arising from the time taken to determine planning applications; the risk of refunding planning application fees to developers; and the risk of challenge on the basis of fairness.

Some risk of delay cannot be mitigated by the Council – such as where statutory consultees are unable to respond to consultation in the usual timescales as a result of the current coronavirus emergency.

2.0 TEMPORARY TAXI LICENCE DELEGATIONS

2.1 This report seeks to make temporary amendments to the scheme of delegation in order to ensure that taxi/private hire licence applications can be dealt with in a timely manner. The proposed delegations supplement but do not reduce or remove any of the powers of the Licensing Panel and will expire in six months' time unless extended by decision of the Council.

2.2 The Licensing Panel, which is a Panel of the Licensing Committee, deals with applications for licences for hackney carriages and private hire vehicles insofar as these have not been delegated to officers. The Public Protection Manager, the Licensing and Business Support Manager, and the Licensing Team Leader currently have delegated authority to issue, revoke and suspend:

- hackney carriage and private hire vehicle licences
- hackney carriage and private hire drivers' licences
- private hire operators' licences

and to take appropriate action in relation to failure to licence, or breach of conditions.

2.3 Officers currently do not have authority to refuse any of the above licences.

2.4 It should be noted that officers do not exercise their delegation in all instances, particularly relating to taxi drivers' licences which are often referred to the Licensing Panel in accordance with the Licensing Procedure.

2.5 Proposed Temporary Delegation

2.6 Whilst it is now possible to hold virtual meetings, it is still possible that the number of members able to attend the Panel could diminish in the coming weeks which could prevent applications being determined; applicants may not have the ability to attend a virtual meeting; and virtual meetings are susceptible to IT and other problems which could result in legal challenge. Virtual meetings should therefore be kept to a minimum so far as possible.

2.7 It is recommended that, provided no officer with any interest in the application takes any part in the determination of that application, officers be authorised to refuse vehicle, drivers and operators licences under sections 60, 61 and 62 of the Local Government (Miscellaneous Provisions) Act 1976, subject to:

- consultation with the Chairman of the Licensing Committee; or
- if the Chairman of the Licensing Committee is not available, consultation with the Vice Chairman; or
- In the absence of the Chairman and Vice-Chairman, consultation with a member of the pool of 15 members who serve on the Licensing Committee where possible.

2.8 It is important to note that applicants have a right of appeal to the Magistrates Court in respect of refusal of a licence.

- 2.9 It is anticipated that, if the above delegation is approved, and officers also use their existing delegated authority to deal with such licences, issues will only need to be submitted to the Licensing Panel in exceptional circumstances during the crisis.
- 2.10 As with the amended planning protocol/delegation detailed above, is it proposed that this extended delegation last for 6 months after which the Council will revert to the existing delegations, unless the Council considers it appropriate to extend the additional delegations.
- 2.11 It is important to note that the proposals:
- do not remove the ability of the Licensing Panel to determine matters, as its powers will co-exist with any extended delegations
 - extend the level of officer delegation but subject to consultation with the Chairman, Vice-Chairman or other member of the Licensing Committee.
- 2.12 **Options**
- 2.13 To agree the proposed extended delegation to officers to refuse licensing applications.
- 2.14 To propose alternative arrangements
- 2.15 To do nothing. This is not considered appropriate. The Council must ensure that taxi licence applications continue to be determined until such time as it is considered safe to hold a physical meeting of the Licensing Panel or to hold a virtual meeting with the risks appropriately managed.
- 2.16 **Reasons for Recommendations**
- 2.17 The proposed delegation allows member input into the refusal of applications unless and until member input is not available. Several other authorities have already delegated refusals to officers, and it is considered appropriate to do so during the crisis. Any appeals are submitted to the Magistrates Court.
- 2.18 There are no legal reasons preventing officers from refusing vehicle, drivers and operators licences under sections 60, 61 and 62 of the Local Government (Miscellaneous Provisions) Act 1976.
- 2.19 It is considered appropriate to keep virtual meetings to a minimum during the crisis and it is proposed that the amended delegation take effect for 6 months, unless extended.
- 2.20 **Expected Benefits**
- 2.21 The extended delegation will allow taxi licence applications to be refused where appropriate in a timely fashion during the crisis.
- 2.22 **Constitutional & Legal implications**
- 2.23 Under section 101 of the Local Government Act 1972 the full Council may authorise officers to discharge any functions. The existing delegation is not wide enough to allow refusal of

taxi licensing applications during the current crisis. There are no legal impediments to the proposed amended delegations.

2.24 **Financial implications**

2.25 No financial implications arise directly out of this report.

3.0 **VIRTUAL MEETINGS**

3.1 The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 came into force on 4 April 2020. The regulations allow local authority meetings held before 7 May 2021 to be held remotely, and allow Councils to make standing orders, and other rules governing remote attendance at meetings of that authority, which may include provision for—

- (a) voting;
- (b) member and public access to documents; and
- (c) remote access of public and press to a local authority meeting to enable them to attend or participate in that meeting by electronic means, including by telephone conference, video conference, live webcasts, and live interactive streaming.

3.2 Proposed amendments to the Council's Constitution, including amendments to Standing Orders, to deal with remote meetings are attached at **Appendix C**. The proposed Standing Order is based upon a model Standing Order prepared jointly by the Association of Democratic Services Officers and Lawyers in Local Government.

3.3 Under Standing Order no. 53 any motion to add to, vary or revoke Standing Orders must, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council. This is designed to ensure that the implications of any proposal raised at a meeting of the Council is considered before Standing Orders are amended. This requirement does not apply where amendments arise from a report approved by the Monitoring Officer. The Monitoring Officer has approved this report.

3.4 **Options**

3.5 To approve the proposed Constitutional amendments detailed in **Appendix C**

3.6 To propose alternative arrangements

3.7 To do nothing. This is not considered appropriate as it is important to agree the Council's internal procedural arrangements for dealing with virtual meetings in order to ensure conformity; ensure that members of the public are aware how things work; and resist legal challenge.

3.8 **Reasons for Recommendations**

3.9 The way a meeting is conducted virtually means that we need additional Standing Orders to accommodate this new way of working (dealing with matters such as how members indicate their vote) and disapplying some of our existing standing orders (such as standing

to speak). The main amendments are based on advice issued jointly by the Association of Democratic Services Officers and Lawyers in Local Government.

3.10 **Expected Benefits**

3.11 The proposed amendments will provide clarity to members, and members of the public about how virtual meetings will work. They will also provide conformity and help to resist legal challenge.

3.12 **Constitutional & Legal implications**

3.13 It is necessary for the Council to adopt governance arrangements for virtual meetings.

3.14 Changes to the Constitution must be approved by the full Council unless the changes are minor, required to remove inconsistency or ambiguity, or required to put into effect any decision of the Council or its committees or the Cabinet.

3.15 **Financial implications**

3.16 No financial implications arise directly out of this report.

3.17 **Risk management implications**

3.18 The proposals mitigate, so far as possible, any risk of challenge arising from the method of decision making.

4.0 **EMERGENCY POWERS OF CHIEF EXECUTIVE**

4.1 Under Part 3 Section F2 paragraph 6 of the Council's Constitution the Chief Executive has power, after consultation with the Leader, to declare an incident to be a major incident under the Peacetime Emergency Plans and thereafter to take any necessary immediate action in respect of the incident including expenditure of money subject to obtaining the agreement of the Leader and to calling a meeting of Cabinet as quickly as possible and so far as practicable thereafter acting in consultation with Cabinet.

4.2 The current crisis has identified a number of issues as set out below, and there is a need to amend and clarify this power to ensure that it works as intended:

- the emergency power assumes that the Chief Executive has declared an emergency. It needs to reflect the fact that an emergency may already have been declared at a national level.
- if the Chief Executive is not available the power is not actionable. A deputy should be available to act in the place of the Chief Executive
- if the Leader is not available to approve the emergency action the Deputy Leader may, under the terms of the Constitution, exercise all of the functions of the Leader but this should be clear in the delegation
- as, by definition, there is not time for call-in of decisions made under an emergency delegation, the delegation should state that call-in does not apply. This will ensure that emergency decisions are implemented with appropriate speed, but will not prevent the Performance Monitoring Panel from scrutinising decisions at a later date
- the delegation is not clear about the level of expenditure of money
- the delegation is not clear about the requirement to call a Cabinet meeting.

- 4.3 A proposed amended delegation is included at **Appendix D** for consideration.
- 4.4 **Options**
- 4.5 To approve the proposed amended delegation at **Appendix D**. This is the recommended option.
- 4.6 To propose alternative arrangements
- 4.7 Do nothing. This is not considered appropriate. This is the first time that this delegation has been tested and the recommendations in this report arise out of experience of using the delegation.
- 4.8 **Reasons for Recommendations**
- 4.9 The proposed amendments clarify issues that have become apparent during the current crisis. It is not intended to extend the delegation which may only be used in exceptional circumstances where usual procedures cannot be followed.
- 4.10 **Expected Benefits**
- 4.11 That the amended delegation will provide further clarity about the limits of the delegation, and allow other officers to invoke the power where the Chief Executive is not available.
- 4.12 **Constitutional & Legal implications**
- 4.13 Under section 101 of the Local Government Act 1972 the full Council may authorise officers to discharge any functions. Most local authority Constitutions contain emergency powers for use by the Chief Executive in a crisis.
- 4.14 As the delegation is specifically contained within the Constitution the proposed change must be approved by the full Council. Only minor changes, changes required to remove inconsistency or ambiguity, or changes required to put into effect any decision of the Council or its committees or the Cabinet can be made without approval by full Council.
- 4.15 **Financial implications**
- 4.16 No financial implications arise directly out of the report.
- 4.17 **Risk management implications**
- 4.18 Any emergency decision made by the Chief Executive, or any deputy acting for the Chief Executive, arising from this delegation will be subject to approval by the Leader.
- 5.0 **VACATION OF OFFICE BY FAILURE TO ATTEND MEETINGS**
- 5.1 Under section 85 of the Local Government Act 1972, and the Council's own Standing Orders (number 56), if a member fails for a period of six consecutive months to attend any meeting of the authority then, unless the failure is due to some reason approved by the authority before the expiry of the period, the member ceases to be a member of the authority.

- 5.2 In addition, if a member of the Cabinet fails for a period of six consecutive months to attend any meeting of the Cabinet, or to make any individual executive decisions then, unless the failure is due to some reason approved by the local authority before the expiry of that period, the member cease to be a member of the local authority.
- 5.3 During the current crisis more routine decisions are fewer in number, as are meetings that members can attend. In addition, even where meetings are now held virtually, not all members will be able to attend for a variety of reasons (such as sickness, family commitments and potential IT difficulties).
- 5.4 It is recommended that the Council authorises all such absence for a period ending upon the Council's Annual Meeting in May 2021, which is a few days after the virtual meetings regulations expire.
- 5.5 **Options**
- 5.6 That all absences from meetings of the Council, Cabinet, and their Committees and Sub-Committees, including failure by any executive member to take any executive decisions, for a period ending upon the Council's Annual Meeting in May 2021 be approved as an authorised reason under section 85 of the Local Government Act 1972 and Standing Order no. 56. This is the recommended option.
- 5.7 To propose alternative arrangements.
- 5.8 Do nothing. This is not considered appropriate as failure to attend meetings, or take executive decisions, for a period of 6 months without approved absence results in vacation of office.
- 5.9 **Reasons for Recommendations**
- 5.10 The recommendation will ensure that absences during the current crisis will not affect members' ability to retain office.
- 5.11 **Expected Benefits**
- 5.12 Members will not be prejudiced by failure to attend meetings, or make executive decisions, during the current crisis.
- 5.13 **Constitutional & Legal implications**
- 5.14 Any member who fails to attend a relevant meeting for a period of six months, including executive members making executive decisions, ceases to be a member of the authority, unless the failure is due to some reason approved by the authority prior to expiry of the six month period. As meetings, and executive decisions, are likely to be fewer in number during the crisis, it is considered appropriate to ensure that members are protected from potential vacation of seats. In addition, should seats be vacated, it would be impossible to hold a by-election at the present time.

5.15 **Financial implications**

5.16 No financial implications arise directly out of the report.

5.17 **Risk management implications**

5.18 Approving the failure of members to attend meetings during crisis avoids the risk of members inadvertently losing office where meetings cannot be held, or executive decisions cannot be made.

6.0 **IMPLICATIONS**

6.1 In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are mainly identified above as part of each item within the report, or dealt with below.

6.2 **Health & Wellbeing**

6.3 The proposals are considered appropriate for the purposes of keeping members, staff and members of the public as safe as possible.

7.0 **WARDS/COMMUNITIES AFFECTED**

7.1 All wards.

8.0 **ACRONYMS**

8.1 None

Background papers:- The Council's Constitution, which can be found on the South Holland District Council website
"Remote meetings protocol and procedure Rules" issued jointly by the Association of Democratic Service Officers and Lawyers in Local Government on 17 April 2020

Lead Contact Officer

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Key Decision: N

Exempt Decision: N

This report refers to a Mandatory Service

Appendices attached to this report:

- Appendix A Proposed protocol/delegations to officers relating to determination of planning applications
- Appendix B Proposed amendments to the Constitution arising from the proposed amended protocol/delegation to officers
- Appendix C Proposed amendments to the Constitution relating to virtual meetings
- Appendix D Proposed amendments to the Emergency Delegation to the Chief Executive following declaration of a major incident and associated amendments

APPENDIX A - Proposed protocol/delegations to officers relating to determination of planning applications

PART 1 - PROPOSED TEMPORARY DELEGATION/PROTOCOL

Subject to paragraphs 1 and 2 below, the Executive Director of Place (or during Covid19 response the Executive Director of Commercialisation) and each of those officers listed immediately below are individually authorised to determine all planning applications during such time as any social distancing measures remain in place as a result of the coronavirus pandemic.

- a) the Place Manager (South Holland)
- b) the Planning and Building Control Manager
- c) the Development Manager, and
- d) the Principal Planning Officer

1. Reference to Chairman's Panel prior to officer exercising delegated authority

- a. The Chairman's Panel must be consulted, prior to an officer exercising his/her delegated authority, in the following cases:
 - (i) where the officer intends to approve an application which is contrary to policy or which raises novel or contentious planning issues
 - (ii) where the application is submitted by the Council or relates to land in which the Council has an interest
 - (iii) where the application is submitted by a Member or Senior Officer (at the level of Service Manager or above) of the Council or involves a Member or Senior Officer interest
 - (iv) where the ward member has requested that the application be subject to consultation with the Chairman's Panel prior to determination and the request clearly relates to material planning considerations
 - (v) where the Officer concerned is not prepared to determine a planning application without first consulting the Panel
- b. For each application referred to above, the Officer concerned shall prepare an officer report and shall send that report at least three days in advance to each member of the Panel and any other member who may attend the Panel meeting in their capacity as Ward Member
- c. The Chairman's Panel shall give its view as to whether it considers the matter to be suitable for determination by the officer or whether it should instead be referred to the Planning Committee. The Officer shall give significant weight to the view of the Panel.
- d. Where the advice of the Chairman's Panel under (c) above would ordinarily be to refer the matter to the Planning Committee, the Panel may in the alternative provide comments on the application to the Officer and to recommend that the officer determines the matter taking account of those comments. The Officer shall retain full authority to determine the matter (or not) but shall give significant weight to the view of the Panel.

- e. The Panel may meet in any way that it considers appropriate including by exchange of email, telephone or video conference and any member of the Panel may be substituted by any other member of the Planning Committee as necessary at any time.

- f. A member of the Democratic Services Team will take notes at each meeting of the Chairman's Panel.

2. Further Conditions Applying to this Protocol

No officer or member with any interest in an application shall take any part in the administration or determination of that application.

Where any application referred to at paragraph 1(a) above is determined under this protocol by an Officer under delegated powers, that officer shall not also be the Case Officer for the application.

The Officers at all times retain the right not to determine an application.

APPENDIX B - Proposed amendments to the Constitution arising from the proposed amended protocol/delegation to officers

Additional words are shown in bold italics and deletions in ~~strikethrough~~

A. Part 3 Section F3 Paragraph 3.1 of the Constitution (Power for the Executive Director in charge of Planning & Development Control to determine planning applications) be amended as follows:

~~3.1.1 To determine all Planning Applications (as defined below) (except Significant Applications as defined below) where the Executive Director considers that, on balance, and after taking into account all material considerations including Human Rights Act issues, the decision would be in compliance overall with national planning policies and guidance, and the policies contained in the Local Plan and any Neighbourhood Plans.~~

3.1.1 For the 6 month period commencing 14 May 2020 and subject to paragraphs 1 and 2 below, the Executive Director of Place (or during Covid19 response the Executive Director of Commercialisation) and each of those officers listed immediately below be individually authorised to determine all Planning Applications during such time as any social distancing measures remain in place as a result of the coronavirus pandemic:

- a) the Place Manager (South Holland)**
- b) the Planning and Building Control Manager**
- c) the Development Manager, and**
- d) the Principal Planning Officer**

1. Reference to Chairman's Panel prior to officer exercising delegated authority

a) The Chairman's Panel must be consulted, prior to an officer exercising his/her delegated authority, in the following cases:

- (i) where the officer intends to approve an application which is contrary to policy or which raises novel or contentious planning issues**
- (ii) where the application is submitted by the Council or relates to land in which the Council has an interest**
- (iii) where the application is submitted by a Member or Senior Officer (at the level of Service Manager or above) of the Council or involves a Member or Senior Officer interest**
- (iv) where the ward member has requested that the application be subject to consultation with the Chairman's Panel prior to determination and the request clearly relates to material planning considerations**
- (v) where the Officer concerned is not prepared to determine a planning application without first consulting the Panel**

b) For each application referred to above, the Officer concerned shall prepare an officer report and shall send that report at least three days in advance to each member of the Panel and any other member who may attend the Panel meeting in their capacity as Ward Member

c) The Chairman's Panel shall give its view as to whether it considers the matter to be suitable for determination by the officer or whether it should instead be referred

to the Planning Committee. The Officer shall give significant weight to the view of the Panel.

d) Where the advice of the Chairman's Panel under (c) above would ordinarily be to refer the matter to the Planning Committee, the Panel may in the alternative provide comments on the application to the Officer and to recommend that the officer determines the matter taking account of those comments. The Officer shall retain full authority to determine the matter (or not) but shall give significant weight to the view of the Panel.

e) The Panel may meet in any way that it considers appropriate including by exchange of email, telephone or video conference and any member of the Panel may be substituted by any other member of the Planning Committee as necessary at any time.

f) A member of the Democratic Services Team will take notes at each meeting of the Chairman's Panel.

2. Further Conditions Applying to this Protocol

No officer or member with any interest in an application shall take any part in the administration or determination of that application.

Where any application referred to in paragraph 1(a) above is determined under this protocol by an Officer under delegated powers, that officer shall not also be the Case Officer for the application.

The Officers at all times retain the right not to determine an application.

3.1.2 ~~The above power is subject to the following:~~

3.1.2 (a) **The above power is subject to** a weekly list being sent to all Members containing details of Planning Applications received.

(b) "Planning Applications" for the purposes of these delegations include applications, notifications or consultations in connection with the following:

- (i) applications for or in connection with planning permissions (including those for amendments),
- (ii) advertisement consents,
- (iii) listed buildings,
- (iv) conservation area consents,
- (v) demolitions,
- (vi) overhead power lines,
- (vii) telecommunications,
- (viii) applications or notifications from public authorities,
- (ix) agricultural notifications,
- (x) minor amendments,
- (xi) variation or removal of conditions.
- (xii) applications for Certificates of Lawfulness of existing or proposed use or development
- (xiii) applications for permission in principle and associated technical details consent (Town and Country Planning (Permission in Principle) Order 2017.

~~(c) "Significant Applications" will include those which:~~

- ~~(i) officers may wish to approve which are contrary to policy or which raise novel or contentious planning issues~~
- ~~(ii) are of particular sensitivity or have a significant impact locally~~
- ~~(iii) have major economic, employment, leisure or environmental content~~
- ~~(iv) are submitted by the Council or which relate to land in which the Council has an interest~~
- ~~(v) are submitted by Members or Officers of the Council or which involve a member or officer interest~~

~~in which case the matter must be referred to the Planning Committee for determination~~

- ~~(i) the ward member or parish council has requested be determined by the Planning Committee and the request clearly relates to material planning considerations~~
- ~~(ii) have been subject to irresolvable objections which clearly relate to material planning considerations~~

~~in which case the Chairman's Panel will be consulted before deciding whether to determine the application under delegated powers or refer the matter to the Planning Committee for determination~~

B. Part 3 Section D Delegations to Committee paragraph 6 be amended as follows:

~~Where a planning application would normally be delegated to the Planning Manager, such application must first be submitted by the Planning Manager to the Chairman's Panel for consultation on whether the application should be determined under delegated powers or referred to the Planning Committee for determination (this Panel is not a decision making body) where:~~

- ~~(a) The Ward member or parish council has requested determination by the Planning Committee and the request clearly relates to material planning considerations; or~~
- ~~(b) There are irresolvable objections which clearly relate to material planning considerations.~~

APPENDIX C - Proposed amendments to the Constitution relating to virtual meetings

Additional words are shown in bold italics and deletions in ~~strikethrough~~

- A. The Glossary of Terms be amended by the addition of the following definition in the list of Miscellaneous Definitions:

"Virtual meeting" means a virtual meeting held under the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020

- B. Standing Orders be amended as follows:

Standing Order no. 4 (quorum) be amended by the addition of the following:

4.4 Where a virtual meeting is held, a member in remote attendance is present and attends the meeting, including for the purposes of the meeting's quorum, if at any time all three of the following conditions are satisfied, those conditions being that the member in remote attendance is able at that time:

- to hear, and where practicable see, and be so heard and, where practicable, be seen by, the other Members in attendance; and***
- to hear, and where practicable see, and be so heard and, where practicable, be seen by, any members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting; and***
- to be so heard and, where practicable, be seen by any other members of the public attending the meeting.***

4.5 A member in remote attendance will be deemed to have left the meeting where, at any point in time during the meeting, any of the conditions for remote attendance contained in Standing Order 4.4 above are not met. In such circumstance the Chairman may, as he/she deems appropriate;

- where the issue relates to failure of the equipment, adjourn the meeting for a short period to permit the conditions for remote attendance of a member contained in 4.4 above to be re-established; or***
- count the number of members in attendance for the purposes of the quorum;***
- provided there is a quorum present at the meeting continue to transact the remaining business of the meeting in the absence of the member in remote attendance.***

Standing Order no. 5.2 (Order of Business - signing of minutes) be amended as follows:

- (c) Approve and sign the minutes of the last meeting ***or, at a virtual meeting, approve the minutes ready for signature at a later date in accordance with Standing Order no. 10.***

Standing Order 7.7 (Questions without notice) be amended as follows

7.7 Members wishing to ask a question under this Standing Order shall indicate such a wish by raising his/her hand **and where in a virtual meeting, this shall be done by electronic means**. The Chairman of the meeting shall determine the order for asking questions subject to the leader of the opposition group (or in his/her absence the deputy leader) being afforded the right to ask the first question. Where there is more than one opposition/minority group the leader of each group shall be afforded the right to ask a question at each meeting and the order shall be determined by the size of the group, the leader of largest group being given priority. Subject to (7.8) below, there shall be no limit on the number of questions that any member, including the leader of the opposition or minority groups, shall be permitted to ask.

Standing Order no. 10.1 (minutes) be amended as follows:

10.1 Signing the Minutes

Unless the next paragraph applies, the Chairman will sign the minutes of the proceedings at the next suitable meeting (including the annual meeting of the Council). The Chairman will invite a member to move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

At a virtual meeting the Chairman will invite a member to move that the minutes of the previous meeting be signed as a correct record and the minutes will be signed as soon as practicable thereafter. The only part of the minutes that can be discussed is their accuracy.

Standing Order 11.1(a) (presentation of Committee or Cabinet reports) be amended as follows:

(a) When the Chairman calls an agenda item consisting of the report of a Committee or the Cabinet, the Chairman of that Committee or the Leader shall rise and present the report **(except that when attending any virtual meeting there shall be no requirement to rise)**.

Standing Order nos. 13.1 (standing to speak) and 13.2 (Chairman standing) be amended as follows:

13.1 ***Except when attending a virtual meeting***, when a member speaks at full Council he/she must stand and address the meeting through the Chairman. If more than one member stands, the Chairman will ask one to speak and the others must sit. Other members must remain seated whilst a member is speaking unless they wish to make a point of order or a point of personal explanation.

13.2 ***Except at a virtual meeting when this will not apply***, when the Chairman stands during a debate, any member speaking at the time must stop and sit down. The meeting must be silent.

Standing Order no. 14.1 (disturbance by member of the public) be amended to read as follows - this amendment to stand at all times:

14.1 If a member of the public interrupts the proceedings at any meeting the Chairman shall warn him / her. If he / she continues the interruption the Chairman shall order his / her removal from the ~~Council Chamber~~ **meeting**. In case of general disturbance in any part of

the ~~chamber~~-**meeting place** open to the public the Chairman shall order that part to be cleared.

Standing Order no. 16 (voting - (applies only to Council meetings)) be amended as follows:

16.1 All questions coming or arising before the Council shall be decided by a majority of the members of the authority present and voting thereon. In the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

16.2 ***Apart from virtual meetings when Standing Order no. 16.6 below shall apply***, the method of voting at meetings of the Council shall be by show of hands. If in the opinion of the Chairman the result is uncertain he / she shall call upon the Council to determine the question by a recorded vote, in which case the names of all members voting for and against the motion or amendment shall be taken down and recorded in the minutes.

16.3 On the requisition of any member of the Council made before the vote is taken and supported by twelve other members who signify their support by rising in their places the voting on any question shall be taken by a recorded vote as above. **At a virtual meeting, where a member has requisitioned a recorded vote, the Chairman shall take a vote by roll-call to determine whether twelve other members support the requisition.**

16.4 Where at a meeting any member so requires, there shall be recorded in the minutes of the proceedings of that meeting whether that member voted for the question, against the question or abstained from voting.

16.5 The Chairman may, at his / her discretion, ask that the number of members voting for and against a motion or amendment be recorded in the minutes.

16.6 At virtual meetings the Chairman shall, unless a recorded vote is required by the Chairman under Standing Order no. 16.2 or is requisitioned under Standing Order no. 16.3, take the vote by roll-call, and the number of votes for or against the motion or amendment or abstaining from voting shall be recorded in the minutes.

Standing Order no. 17.2 (voting on appointments) be amended to read as follows:

17.2 The Chairman may at his / her discretion call upon the Council to vote:

(a) by each member, when called upon, announcing to the Council the name of the person for whom he/she votes;

(b) by each member entering that name upon a voting paper to be signed by him / her and delivered to the Chief Executive;

Provided that ***at any virtual meeting method (a) shall apply, and at any non-virtual meeting*** any member may demand that method (b) be employed and if one third of other members signify their support by rising in their places the vote shall be taken.

Standing Order no. 18 (record of attendances) shall be amended as follows:

18.1 Except at virtual meetings where the Chairman (or such other person at the Chairman's direction) shall at the beginning of a meeting take a roll-call of members in attendance, all members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting to assist with the record of attendance. The names of members present at a meeting or part of a meeting will be recorded in the minutes.

Standing Orders nos. 19A and 29A and 35 (cancellation or postponement of full Council, Cabinet meetings and Committee meeting) be amended so that

the words "be posted at the Council Offices" are amended to read "be posted at the Council Offices (**where possible**), and on the Council's website."

Standing Order no. 39 (voting at Committees and Sub-Committees) be amended as follows:

39.1 Apart from virtual meetings when Standing Order no. 39.4 below shall apply, voting at a meeting of a Committee or Sub-Committee shall be by show of hands.

39.2 A member may request that his / her own name be recorded in the minutes as voting for or against or abstaining when voting on a motion or amendment.

39.3 The Chairman or any member of the Committee or Sub-Committee may, at his discretion, ask that the numbers voting for and against a motion or amendment be recorded in the minutes.

39.4 At virtual meetings of any quasi-judicial committee or sub-committee (including the Planning Committee and the Licensing Committee) the Chairman shall take a recorded vote on each matter under discussion and the names of all members voting for and against the motion or amendment, or abstaining from voting, shall be taken down and recorded in the minutes. At all other virtual meetings the Chairman shall take the vote by roll-call and, unless a recorded vote is taken under Standing Order no. 13, the number of votes for or against the motion or amendment or abstaining from voting will be recorded in the minutes.

Standing Order no. 41 (public speaking) be amended as follows:

41.1 A Committee, Sub-Committee or Working Party of the Council may, unless alternative arrangements for public speaking are in place elsewhere in this Constitution and if it resolves to do so, allow members of the public to address the meeting. In this case, that body may set rules and procedures under which such a scheme will operate.

41.2 Additionally the Chairman may at any time invite a person to speak where he/she considers it to be appropriate.

41.3 Where a member of the public is entitled to attend a remote meeting in order to exercise a right to speak at the meeting, that person is in remote attendance at any time if all three of the following conditions are satisfied, those conditions being that the member of the public in remote attendance is able at that time:

- **to hear, and where practicable see, and be so heard and, where practicable, be seen by, Members in attendance; and**
- **to hear, and where practicable see, and be so heard and, where practicable, be seen by, any other members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting; and**
- **to be so heard and, where practicable, be seen by any other members of the public attending the meeting.**

41.4 A member of the public in remote attendance will be deemed to have left the meeting where, at any point in time during the meeting, any of the conditions for

remote attendance contained in 41.3 above are not met. In such circumstance the Chairman may, as he or she deems appropriate:

- **adjourn the meeting for a short period to permit the conditions for remote attendance contained in 41.3 above to be re-established;**
- **suspend consideration of the item of business in relation to the member of public's attendance until such time as a following item of business on the agenda has been transacted and the conditions for the member of the public's remote attendance have been re-established or, on confirmation that this cannot be done, before the end of the meeting, whichever is the earliest; or**
- **continue to transact the remaining business of the meeting in the absence of the member of the public in remote attendance.**

Standing Order no. 42 (rights of other members to attend Committee of Sub-Committee) shall be amended by the addition of the following paragraph after the heading:

Where a member attends a virtual meeting under this Standing Order then Standing Order 4.4 and 4.5 shall apply to that member.

Standing Order no. 45.2 (interest of members in contracts and other matters) be amended, and Standing Order 45.3 be added, as follows:

45.2 Where a member has a Disclosable Pecuniary Interest the member must declare the interest to the meeting and leave the room (**or, where the meeting is a virtual meeting, leave the meeting**) without participating in any discussion or making a statement on the item, except where a member is permitted to remain as a result of the grant of a dispensation.

45.3 Where a member is required to leave a virtual meeting, the means of remote attendance and access is to be severed whilst any discussion or vote takes place in respect of the item or items of business in which the member or co-opted member may not participate.

C. Access to Information Procedure Rules be amended by the addition of the following Rules

2A VIRTUAL MEETINGS

2A.1 For all purposes of the Constitution, including these Rules, the terms "notice", "summons", "agenda", "report", "written record" and "background papers" when referred to as being a document that is:

(i) "open to inspection" shall include for these and all other purposes as being published on the website of the Council; and

(ii) to be published, posted or made available at offices of the authority shall include publication on the website of the authority.

3A REMOTE ACCESS TO VIRTUAL MEETINGS

3A.1 For all purposes of the Constitution, including these Rules, the term “meeting” is not limited in meaning to a meeting of persons all of whom, or any of whom, are present in the same place, for which purposes any reference to:

- **“place” is to be interpreted as where a meeting is held, or to be held, includes reference to more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers: and**
- **“open to the public” includes access to the meeting being through remote means including (but not limited to) video conferencing, live webcast, and live interactive streaming and where a meeting is accessible to the public through such remote means the meeting is open to the public whether or not members of the public are able to attend the meeting in person; and**

3A.2 If the Chairman is made aware that the meeting is not accessible to the public through remote means, due to any technological or other failure of provision, then the Chairman shall adjourn the meeting immediately. If the provision of access through remote means cannot be restored within a reasonable period, then the remaining business will be considered at a time and date fixed by the Chairman. If he or she does not fix a date, the remaining business will be considered at the next ordinary meeting.

3B REMOTE ATTENDANCE AT MEETINGS BY MEMBERS AND MEMBERS OF THE PUBLIC

Please see Standing Orders no. 8 (quorum) and 41 (public speaking)

APPENDIX D - proposed amendments to the Emergency Delegation to the Chief Executive following declaration of a major incident and associated amendments

Additional words are shown in bold italics and deletions in ~~striketrough~~

Paragraph 5 of Part 3 Section F2 of the Constitution (Delegations to Chief Executive) be amended to read as follows:

6.0 Power, after consultation with the Leader, to declare an incident to be a major incident under the Peacetime Emergency Plans **(or to acknowledge such declaration made nationally or regionally)** and thereafter to take any necessary immediate action in respect of the incident including expenditure of money subject to:

- obtaining the agreement of the Leader, **or Deputy Leader if the Leader is unable to act for any reason**, and
- **complying with Financial Management Standard 1.4 (Emergency Procedures)**;
- calling a meeting of Cabinet as quickly as possible **where practicable**. ~~and~~
- ~~so far as practicable thereafter acting in consultation with Cabinet.~~

Where the Chief Executive is unable to act for any reason authority be delegated to any individual Director. This delegation applies to executive and non-executive functions. Any executive decision taken under this emergency power must be published and the decision notice must make it clear that the decision is taken under this paragraph as an emergency decision and that call-in does not apply.

Paragraph 7 of Part 3 Section D of the Constitution (Delegations to Committees - Cabinet delegations) be amended to read as follows:

7. All Executive Decisions are subject to the Call- In procedure set out later in Part 3, other than urgent decisions (as set out in the Access to Information Procedure Rules), **decisions made during a major incident under the emergency powers in Paragraph 5 of Part 3 Section F2**, and non-Key Decisions made by officers.

The call-in procedure included below paragraph 15 of Part 3 Section D of the Constitution (Delegations to Committees - Performance Monitoring Panel) be amended to read as follows:

Call-In procedure for Executive Decisions
(Call-in does not apply to Executive Decisions taken under Rules 12 to 15 of the Access to Information Procedure Rules, **decisions made during a major incident under the emergency powers in Paragraph 5 of Part 3 Section F2, and non-Key Decisions made by officers.**)