

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Portfolio Holder – Corporate and Communications
Mark Stinson - Assistant Director – Governance and Monitoring Officer

To: Full Council – 24 November 2021

Author: Jacqui Berridge - Lawyer

Subject: Planning Applications – Determination

Purpose: To consider an amended delegation to officers relating to the determination of planning applications

Recommendations:

- (a) That the amended officer delegation detailed in Appendix B to this report be approved with immediate effect; and
- (b) That the Constitution be amended accordingly; and
- (c) That the Head of Planning be authorised, in consultation with the Leader, to re-apply the previous officer protocol/delegation (ie the protocol/delegation that applied from 13 May 2020 to 24 November 2021) if at any time legal restrictions make it impossible to hold both physical and virtual meetings of the Planning Committee due to Covid, such protocol/delegation to extend up to and including the date on which the agenda for the physical or virtual meeting is issued; and
- (d) That the above delegation to the Head of Planning be applied as often as may be necessary.

1.0 BACKGROUND

- 1.1 Full Council at its meeting on 13 May 2020 approved a protocol/delegation for the determination of planning applications by officers during Covid (called “the Covid protocol” for the remainder of this report). The Covid protocol necessitated amendments to the Constitution and those amendments are shown at Appendix A.
- 1.2 The Covid protocol was originally approved for a 6 month period, but this period was extended by full Council on 25 November 2020, and again on 28 April 2021, so that it applied until the full Council meeting on 24 November 2021 with the intention that the Council would then either adopt new permanent planning delegations or revert to the planning delegations that applied immediately prior to 13 May 2020.
- 1.3 It is not considered appropriate to revert to the officer delegations that applied prior to Covid as there were some grey areas constitutionally that required clarification. Furthermore, there is an opportunity to take positive learning from the previous 18 months, throughout which performance against national targets has been maintained. This report therefore considers proposed amended planning delegations.

2.0 PROPOSED DELEGATIONS

- 2.1 The temporary delegations contained within the Covid protocol were wide ranging. The protocol was introduced because of the inability to hold physical or virtual meetings but ultimately the Council was able to hold virtual meetings and officers did not need to rely fully on the Covid protocol. As a result, over the past 18 months, the practice has been to rely partly on the Covid protocol.
- 2.2 From an operational perspective this has worked very well, and this report recommends an amended delegation which reflects the practice over the past 18 months. The proposed delegation is subject to appropriate checks and balances which will ensure that:
- important applications will continue to be heard by the Planning Committee;
 - the more simple and less controversial applications will continue to be dealt with by officers under delegated authority;
 - Chairman's Panel will continue to give a view on whether certain applications merit Planning Committee involvement (not a decision-making body);
 - ward members and parish councils will continue to be able to ask for applications to be submitted to the Chairman's Panel;
 - officers will retain the ability to refer applications to the Planning Committee where they consider it appropriate.
- 2.3 As Covid-19 infections are again rising it is proposed, at the same time, to give the Head of Planning delegated authority, in consultation with the Leader, to revert to the Covid protocol if at any time legal restrictions make it impossible to hold both physical and virtual meetings of the Planning Committee. This will override any necessity to secure an emergency delegation if the situation deteriorates, enabling business to continue and performance preserved.

3.0 **OPTIONS**

- 3.1 That the amended delegation be approved, and officers also be authorised to reapply the Covid protocol if this becomes necessary, in consultation with the Leader. This is the preferred option and allows flexibility if further Covid lockdowns prevent meetings from being held for any period of time.
- 3.2 That members amend the proposed delegation as they see fit. If members wish to amend the delegation in a way that requires submission of a further report it is considered appropriate formally to extend the Covid protocol until such time as such amended delegation is approved.
- 3.3 Do nothing. This is not appropriate. The Covid protocol expires on 24 November 2021 and a decision about future delegation to officers is imperative.

4.0 **REASONS FOR RECOMMENDATIONS**

- 4.1 The Covid protocol has now expired and it is necessary to reconsider officer delegations for the determination of planning applications.

5.0 **EXPECTED BENEFITS**

- 5.1 The proposed delegation is intended to ensure timely determination of planning applications by officers whilst allowing the Planning Committee to concentrate its expertise on more complex or contentious applications, or where the Council or a senior officer has an interest.

6.0 **IMPLICATIONS**

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; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

6.1 Constitution & Legal

6.1.1 Delegations to officers relating to the determination of planning applications flow from full Council to the Planning Committee such that either full Council or the Planning Committee can delegate to officers.

6.1.2 Amending the Constitution is a function reserved to full Council.

6.2 Risk Management

6.2.1 The recommendations are intended to ensure that planning applications are determined in a timely fashion which will limit any repayment of application fees.

7.0 WARDS/COMMUNITIES AFFECTED

7.1 None.

8.0 ACRONYMS OR DEFINITIONS

8.1 Covid protocol – the protocol/delegation granted to officers to determine planning applications during Covid, approved by full Council on 13 May 2020, and extended by full Council on 25 November 2020 and again on 28 April 2021, and as shown in Appendix A to this report.

Background papers:-	None. Previous reports relating to this matter were submitted to full Council as described in paragraphs 1.1 and 1.2
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Key Decision: No

Exempt Decision: No

This report refers to a Discretionary Service

Appendices attached to this report:

Appendix A - Previously agreed amendments to the Constitution arising from the Covid protocol agreed on 13 May 2020 as amended on 28 April 2021

Appendix B – Proposed amended officer delegation – Part 3 Section F3 paragraph 3.1

APPENDIX A – Previously agreed amendments to the Constitution arising from the Covid protocol agreed on 13 May 2020 and amended on 28 April 2021

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

~~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.~~

Subject to paragraphs 1 and 2 below, the Executive Director responsible for planning 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) Assistant Director responsible for planning***
- b) the Service Manager responsible for planning***
- 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 Page 58 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.~~

APPENDIX B – Proposed amended officer delegation – Part 3 Section F3 paragraph 3.1

“Specific Delegations

3.1 Power for the Assistant Director in charge of planning and development control:

Planning Applications

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

- (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 full or outline planning permissions including (but not limited to) associated applications for reserved matters approval, condition compliance applications, variation/removal of conditions (s.73/S73A applications),
 - (ii) applications to modify or vary planning obligations,
 - (iii) advertisement consents,
 - (iv) listed buildings,
 - (v) prior approval notifications
 - (vi) demolitions (including buildings in a conservation area),
 - (vii) overhead power lines,
 - (viii) telecommunications,
 - (ix) applications or notifications from public authorities,
 - (x) agricultural notifications,
 - (xi) minor amendments (including non-material amendments),
 - (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,
 - (xiv) any other application under current or future planning legislation.
- (c) “Significant Applications” will include those where:
 - (i) the ward member or parish council has requested the application be determined by the Planning Committee or referred to Chairman’s Panel and that request clearly relates to material planning considerations; or
 - (ii) the application is submitted by the Council’s Building Consultancy Service; or
 - (iii) officers believe that the application warrants the consideration of the Chairman’s Panel

in which case the Chairman’s Panel will be consulted before the officer decides whether to determine the application under delegated powers or refer the matter to the Planning Committee for determination (this Panel is not a decision-making body). The Panel may meet in any way that it considers appropriate and any member of the Panel may be substituted by any other member of the Planning Committee as necessary at any time (see Part 3 Section D paragraph 1.6). For each application referred to Chairman’s Panel, 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;

- (iv) officers intend to approve an application contrary to the development plan
- (v) the application is submitted by the Council or relates to land in which the Council has an interest
- (vi) 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
- (vii) the application has been referred to Planning Committee following consultation with the Chairman's Panel
- (viii) the officer believes that the application warrants the consideration of the Planning Committee due to a particular sensitivity or significant impact locally or which raise novel or contentious planning issues

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

(d) "Significant Applications" will not include:

- (i) prior approval notifications,
- (ii) agricultural notifications,
- (iii) Certificates of Lawfulness,
- (iv) permissions in principle,
- (v) condition compliance,
- (vi) minor amendments (including non-material amendments)."