

## SECTION A – MATTERS FOR DECISION

### Proposed Amendment to Planning Delegated Arrangements

#### Background

As part of the continuous review of service delivery, a number of areas for improvement have been identified in respect of the delivery of the planning service.

In January 2017 Council granted delegated authority to the Planning Committee for the Planning function, including any further amendments as may be deemed necessary to the delegated arrangements / procedures in future.

This report seeks to include minor changes to the delegated arrangements in order to make the system more efficient without undermining the democratic process or customer care.

#### Developments of National Significance<sup>1</sup>

The Developments of National Significance (DNS) process was introduced in Wales (in 2016) to “ensure timely decisions are made on those planning applications that are of the greatest significance to Wales, because of their potential benefits and impacts”.

Such applications are submitted to the Planning Inspectorate Wales for consideration by an appointed Inspector, who considers evidence from the applicant, the Local Planning Authority (LPA) and other statutory consultees and interested parties.

For a project to qualify as a DNS, certain thresholds and criteria apply<sup>2</sup>. The most obvious examples, and ones which are expected to relate to our area in the near future, are wind farms which are caught by the need for ‘energy generation projects’ of between 10MW and 350MW to be a DNS.

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<sup>1</sup> The statutory basis for the Development of National Significance (“DNS”) process is provided by the Planning (Wales) Act 2015, which amends the Town and County Planning Act 1990 (“the Act”), and the Developments of National Significance (Wales) Regulations 2016 (as amended) and subsequent Regulations.

<sup>2</sup> Precise details of the criteria related to various projects can be found in the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 (as amended).

### *Current Delegated Arrangements*

The current delegated arrangements require the Planning Committee to approve the Council's Local Impact Report (LIR) for Developments of National Significance.

The purpose of a Local Impact Report is to give a factual, objective view of the impacts of a proposed development on the area in question based on the Council's existing body of local knowledge and robust evidence of local issues. The impacts should be presented in terms of their positive, neutral and negative effects, and is distinct from any representation a local authority may make on the merits of an application.

As noted in the Planning Inspectorate's [Local Impact Report \(LIR\) Guidance](#), however, Local Authorities only have 5 weeks to submit their Local Impact Report. Failure to submit the LIR within that 5 weeks means that the fee of £7750 paid to the Local Authority (which is the only fee we receive in respect of a DNS application) is returned to the applicant.

Having regard to the above, while it would be expected that discussions would have been ongoing with an applicant before submission, the requirement for a Local Impact Report to be reported to Committee both significantly increases the chance that a LIR could be submitted late (thus resulting in loss of income) and places additional strains on the Development Management team in seeking to undertake appropriate research, consult internally and prepare such a report to Committee (within 2-3 weeks of receipt).

### *Proposed Changes to Protocol*

In order to address the above, it is proposed to remove the requirement for the Local Impact Report on a Development of National Significance (DNS) to be brought before Members, replacing it instead with a delegated authority (under 'Normal Delegated Matters') for the Head of Planning & Public Protection / Development Manager – Planning to agree the Local Impact Report subject to consultation with the Chair of Planning as follows:

- (i) Developments of National Significance (DNS): Approval and submission of the Authority's Local Impact Report (LIR) (in conjunction with the Chair of Planning); Submission of consultation responses etc.; Discharge of Conditions / Requirements on DNS applications.

## 'Subsequent' Applications by Members or Members of Staff

### *Current Delegated Arrangements*

The current delegated arrangements require the Planning Committee to determine all applications / matters which fall within the following criteria:-

1. Where an application (with the exception of Non-Material or Minor Material Amendments or the approval of conditions pursuant to permissions previously granted) has been submitted by a Member of the Council or close relative of a Member.
2. Where an application (with the exception of Non-Material or Minor Material Amendments or the approval of conditions pursuant to permissions previously granted) has been submitted by an employee of the Council who is directly involved in the Development Management process [or in an identified post].

The intention of the above is to ensure appropriate scrutiny of such applications in the interest of transparency.

It has been noted however that there is no 'exemption' for applications to vary conditions on any such consents (under section 73), for example seeking to extend the time to commence development, or remove/ vary conditions. Given that such matters do not go to the heart of any decision – which has already been made by Committee – it is considered appropriate at this time to extend the exemption from reporting to Committee to include such post-decision applications/ changes.

### *Proposed Changes to Protocol*

In order to address the above, the following changes are recommended to the current delegated arrangements: -

4. Where an application (with the exception of Non-Material or Minor Material Amendments, **Section 73 applications to vary conditions**, or the approval of conditions pursuant to permissions previously granted) has been submitted by a Member of the Council or close relative of a Member.

5. Where an application (with the exception of Non-Material or Minor Material Amendments , **Section 73 applications to vary conditions**, or the approval of conditions pursuant to permissions previously granted) has been submitted by an employee of the Council who is directly involved in the Development Management process or in a post identified below: -

- Director of Environment **and Regeneration**
- Head of Planning and Public Protection
- All posts under the direct responsibility of the Head of Planning and Public Protection
- Head of Engineering and Transportation
- Highways Development Control Officers
- Drainage Officers
- Head of Regeneration
- Head of Streetcare
- Head of Legal Services
- Committee Clerk (Planning)
- Principal Solicitor (Litigation and Planning)

### Felling of Trees covered by Tree Preservation Order

#### *Current Delegated Arrangements*

The current delegated arrangements require any application for felling of trees covered be a Tree Preservation Order to be reported to a Delegated Panel and subsequently ratified by Ward members.

Increasingly, applications are being submitted to fell trees which are affected by disease (such as Ash Die Back) and/or which the Council's Arboricultural officer agrees need to be removed due to disease.

In such circumstances it is considered inappropriate for the decision to need to be signed off by Members, given that the Council's technical Officer will have reviewed the tree report and assessed the application. Accordingly it is intended to remove the requirement for a delegated panel decision for felling of 'diseased' trees (which would by default become a normal delegated matter)

### *Proposed Changes to Protocol*

In order to address the above, the following changes are recommended to the current delegated arrangements (under B. Delegated Panel Procedure): -

- Felling of trees covered by Tree Preservation Order (except where the Council's Arboriculturist as confirmed that the tree(s) is/are diseased)

### Number of Objections Received

#### *Current Delegated Arrangements*

The current delegated arrangements require any application where three or more objections are received on valid planning grounds to be reported to a Delegated Panel and subsequently ratified by Ward members.

The purpose of the objection threshold is to ensure that those applications which have raised concerns from multiple households have an additional degree of public scrutiny through the ratification of decisions by the Ward members (with the opportunity to call such applications into committee). This process has consistently worked well over the years.

The 'three or more objections' rule has, however, led to occasional confusion in circumstances where more than one person from the same household objects (or objects multiple times), which might mean that three objections are received but potentially only from one or two households.

Given that the impacts of any such development are on the

The opportunity is therefore taken to clarify that the three or more objections on valid planning grounds need to be from three or more households, thus preventing one person or household making multiple objections.

### *Proposed Changes to Protocol*

In order to address the above, the following changes are recommended to the current delegated arrangements (under B. Delegated Panel Procedure): -

- Applications / matters where three or more objections (from three or more households) are received on valid planning grounds

## CONCLUSION

The above changes are all considered necessary and appropriate to ensure that the Development Management process is streamlined, and that applicants get expeditious decisions while still ensuring that there is appropriate member scrutiny of those applications with the greatest identified impacts.

The changes above are identified in detail within Appendix 1 and will need to be incorporated into the Constitution.

## RECOMMENDATION

That Members authorise the changes to the current scheme of delegations as set out in Appendix 1 of this report.

## **NEW DELEGATED ARRANGEMENTS**

The previous delegated arrangements were approved by Council on 25th January 2017.

It would be proposed that the Constitution be updated to include the below (the changes being highlighted in red).

### **Proposed New Delegated Arrangements**

Part 3 of the CONSTITUTION - Annex J – Delegation No. 17 of the DIRECTOR OF ENVIRONMENT AND REGENERATION Delegation Arrangements {see page 3.151 of constitution version 14/01/2017}.

#### 17. Planning

##### **17.1 General Planning Delegation**

###### A. Determination of Applications / matters by the Planning Committee

The Planning Committee will determine all applications / matters which fall within the following criteria: -

1. Where an application is considered to be of strategic importance, or where it is considered by Officers to be appropriate to be determined by Members, taking into account the views of Members where they have requested an application to be considered at Committee (*note: the Member process is set out in the Appendix*).
2. Where an application is to be recommended for approval, and where it is considered by Officers that the proposals would materially depart from Policies within the Development Plan.
3. Where an application has been submitted relating to a Nationally Significant Infrastructure Project (NSIP), approval of the Authority's Local Impact Report and initial Written Representations
4. Where an application (with the exception of Non-Material or Minor Material Amendments, **Section 73 applications to vary conditions**, or the approval of conditions pursuant to permissions previously granted) has been submitted by a Member of the Council or close relative of a Member.

5. Where an application (with the exception of Non-Material or Minor Material Amendments, **Section 73 applications to vary conditions**, or the approval of conditions pursuant to permissions previously granted) has been submitted by an employee of the Council who is directly involved in the Development Management process or in a post identified below: -

- Director of Environment and Regeneration
- Head of Planning and Public Protection
- All posts under the direct responsibility of the Head of Planning and Public Protection
- Head of Engineering and Transportation
- Highways Development Control Officers
- Drainage Officers
- Head of Regeneration
- Head of Streetcare
- Head of Legal Services
- Committee Clerk (Planning)
- Principal Solicitor (Litigation and Planning)

Except as listed above, the Director of Environment and Regeneration, the Head of Planning and Public Protection, and Development Manager - Planning are granted Delegated Powers for the determination of all planning and other related matters / applications in accordance with the following procedures: -

#### B. 'Delegated Panel' Procedure

To determine applications / reports relating to the following matters and following agreement with local Ward Members and subject to the provisions of the Planning Code of Conduct: -

- Applications / matters where three or more objections (**from three or more households**) are received on valid planning grounds
- Refusal of Applications
- Developments in excess of 5 dwellings (either in full or outline) which do not already have the benefit of a live planning permission
- Developments (either in full or outline) creating new floorspace in excess of 1000 sq.m. in respect of industrial, agricultural, commercial or non-commercial buildings which do not already have the benefit of a live planning permission



- Applications made under section 73 (to develop land without compliance with conditions previously attached to a consent) where development comprises more than 5 dwellings or more than 1000 sq.m. of new floorspace.
- Changes of use where the floorspace is in excess of 1000 sq.m.
- Approval of applications where proposals materially depart from approved Supplementary Planning Guidance
- Deeds of Variation or applications seeking to vary the terms of an existing Section 106 legal agreement
- Authorisation to serve an Enforcement Notice (unless urgently required in connection with a Stop Notice)
- Applications made by the Council (under Regulation 3 or Regulation 4 of the Town & Country Planning General Regulations 1992)
- Felling of trees covered by Tree Preservation Order (**except where the Council's Arboriculturist has confirmed that the tree(s) is/are diseased**)
- Authorisation to confirm a Tree Preservation Order where objections are received to its issue
- Approval of Hedgerow Removal Notice under the Hedgerow Regulations 1997 where a hedgerow is "important"

#### C. 'Normal' Delegated Matters

All other applications or matters not referred to under 'A' - Determination of Applications / matters by the Planning Committee; or B - 'Delegated Panel' Procedure in addition to but not limited to the following: -

- (i) Nationally Significant Infrastructure Projects (NSIPs): Submission of consultation responses; discharge of requirements following grant of a Development Consent Order (DCO), and responses to applications to vary such Consent (including consents previously granted under section 36 of the Electricity Act 1989).
- (ii) Developments of National Significance (DNS): **Approval and submission of the Authority's Local Impact Report (LIR) (in conjunction with the Chair of Planning);** Submission of consultation responses etc.; Discharge of Conditions / Requirements on DNS applications.

- (iii) Planning Enforcement Procedures, including service and withdrawal of Notices and to institute legal proceedings for non-compliance with notices, or injunction proceedings, in conjunction with the Head of Legal Services.
- (iv) Section 106 Agreements: To authorise the entering into of Section 106 Agreements under the Town and Country Planning Act 1990

## **17.2 Building Regulations Delegations**

The Director of Environment, the Head of Planning and Public Protection, and Building Control & Business Support Manager are granted Delegated Powers for the determination of all Building Regulations and other related matters / applications: -

- (i) To determine all applications in respect of the Building Regulations.
- (ii) To authorise the issue of infringement notices and any enforcement action with respect to Building Regulations.
- (iii) Building Act 1984
  - (a) Delegated powers for the elements of the Planning Service covered by legislation under the Building Act 1984.
  - (b) To authorise individual Officers to act as Inspectors/Authorised Officers/Enforcement Officers under legislation contained in the Building Act 1984.
  - (c) In consultation with the Head of Legal Services / solicitor to the Council, to institute legal proceedings on behalf of the Council in respect of any offence under the above Act. (This delegation also applicable to the Principal Officer (Building Control)).
- (iv) Safety at Sports Ground Act 1975: To issue and sign the relevant Safety Certificates under the Safety at Sports Ground Act 1975 (as amended) and to take any enforcement action (the latter to be reported to the Planning Committee for information)
- (v) Safety of Stands for Spectators – Section 42 West Glamorgan Act 1987
- (vi) Retaining Walls – Section 26 West Glamorgan Act 1987

### 17.3 Other Delegation

The Director of Environment and Regeneration and the Head of Planning and Public Protection are granted Delegated Powers for the following matters: -

(i) Natural Resources Wales (Forestry) - Consultations on Felling Proposals

- (a) Where there are no objections, the response to Natural Resources Wales is delegated to the Director;
- (b) Where objections are raised by local Members, relevant Community Councils, or by Officers, that the Director be delegated the power to request that this Authority be granted an extension of time, or to submit an objection to Natural Resources Wales. The matter would then be reported to the next available Planning Committee for consideration and that Committee be given plenary powers to resolve the Authority's formal decision. Relevant local Members would be invited to attend the Committee and any site visits, but would not be entitled to vote, in the same manner as in the determination of planning applications;

(ii) Neath and Port Talbot Local Access Forum

To determine future changes to the membership of the forum in consultation with either the Leader or Deputy Leader.

(iii) Rights of Entry

To authorise rights of entry to relevant Officers in respect of the following legislation:-

- (a) Town and Country Planning Act 1990 (as amended) – Section 324;
- (b) Wildlife and Countryside Act 1981 (as amended) – Section 51;
- (c) Planning (Listed Building and Conservation Areas) Act 1990 (as amended) – Sections 88 – 88B;
- (d) Planning (Hazardous Substances) Act 1990 (as amended) – Sections 36-36B;
- (e) Highways Act 1980 – Section 293;
- (f) Road Traffic Regulation Act 1984 – Section 71.
- (g) Anti Social Behaviour Act 2003 (High Hedges) – Section 74

(iv) Affordable Housing Contributions

The Head of Planning and Public Protection is granted delegated authority to review and make any necessary amendments to the charge levied for the negotiation of the Affordable Housing Contribution

## APPENDIX A

### Delegation Process (Development Management Matters / Applications)

1. If any Member of the Council considers that it would be more appropriate to report an application to Committee for decision, Officers will put the matter before Committee provided: -
  - a. a valid planning reason has been given by the Member (such reason to be clearly indicated within the subsequent report to Committee), and
  - b. such request has been made in writing to the Head of Planning and Public Protection or Development Manager – Planning within 14 days of the application being circulated on the ‘weekly list’ of applications<sup>1</sup>; and
  - c. subject to the Members request having been approved by a Panel comprising the Chairperson of Planning and either the Head of Planning and Public Protection or Development Manager – Planning, having regard to the need to ensure that the Planning Committee is restricted to dealing with those applications which, by reason of their complexity or local sensitivity, require detailed scrutiny by Committee, and the need for making expeditious decisions, such approval not to be withheld by the panel unreasonably. In the event of the Panel being unable to agree, the Chairperson of Planning has the casting vote.
2. To maintain accountability and transparency, reports will be prepared for all delegated matters / applications outlining the material issues for consideration together with a recommendation.
3. In the case of ‘Normal’ Delegated Matters (para 17 (i) C of Annex J), each report is to be signed by the Case Officer and Team Leader or in their absence the Development Manager – Planning or Head of Planning and Public Protection, prior to issuing the decision notice.

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<sup>1</sup> This does not undermine the ability of a local Member to call in an application after a delegated panel has made a recommendation

4. Where applications are being dealt with under the 'Delegated Panel' procedure (para. 17 (i) B. of Annex J), a panel of Officers (comprising a minimum of three at Senior Planning Officer grade or above, including the Head of Planning and Public Protection and/or the Development Manager - Planning) will consider and sign off the report and its recommendation, in addition to which the following additional process will apply:-
- (a) Where following consultation with officers the relevant Ward Member(s) have agreed that the application can be determined the delegated decision can be made.
  - (b) if any Ward Member (or such Member nominated to deal with matters in the event of their absence) considers that it would be more appropriate to report the application to Committee for decision, Officers will put the matter before Committee provided a valid planning reason has been given by the Ward Member (such reason to be clearly indicated within the subsequent report to Committee) and subject to agreement of the panel procedure in 1(c) above
  - (c) In the absence of any agreement under 4(a) or representation under 4(b) that the relevant Ward Member(s) (or such Member nominated to deal with matters in the event of their absence) be advised of the proposed decision via e-mail, giving 3 working days to respond to a named officer(s) within the Department. Responses will be dealt with in accordance with (a) or (b), but if no response is received, it will be assumed that the relevant Members are satisfied that the application can be continued to be dealt with under delegated powers and the decision notice will be issued.