

CITY COUNCIL – 10 DECEMBER 2012

REPORT OF THE LEADER

AMENDMENT OF THE CONSTITUTION - DEVELOPMENT CONTROL COMMITTEE TERMS OF REFERENCE AND ASSOCIATED AMENDMENTS TO THE SCHEME OF DELEGATION AND CHANGE OF NAME

1 SUMMARY

- 1.1 This report seeks approval to vary the Constitution by amending both the Scheme of Delegation and the Terms of Reference for Development Control Committee. As part of the 2010/11 review into the Council's planning service, changes have been identified that will help the Committee to focus on strategically important, complex and sensitive planning applications. This will allow routine cases to be determined more quickly, helping to meet national targets, and will enable Councillors' time to be used more efficiently.
- 1.2 These changes are part of a wider strategy to enable the Committee to provide a clear and consistent profile to the wider city, planning and development community. The changes will also help to deliver the Council's priorities by encouraging new investment more effectively.
- 1.3 In addition, it is proposed that the name of Development Control Committee be changed to "Planning Committee". This will remove the perception that the Committee is trying to control or restrict development and is a title that the public easily understand.

2 RECOMMENDATIONS

It is recommended that:

- 2.1 The changes to the Constitution, as set out in tables 1-9 (below), be approved.
- 2.3 The proposed change of name from Development Control Committee to Planning Committee, be approved.

3 REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)

- 3.1 In 2008, the government commissioned the “Killian Pretty Review”, which was an independent review of the planning application system in England. The review looked at all aspects of the application process and made recommendations for improvements. One of these was that “local planning authorities should review and update their local schemes of delegation, so that the resources of planning committees are focused on applications of major importance or wider significance”. The proposed changes are in line with this aspiration.
- 3.2 On 16 June 2010, a report was presented to Development Control Committee, setting out the findings of a review into the City Council’s planning function. The decision was taken that the planning application service should move away from its former ‘Development Control’ way of working, to a Development Management philosophy, taking a more positive and pro-active approach to new development proposals. Since that time, various changes have taken place and the service is now better equipped to respond to council priorities. Improvements have been made to the pre-application stage, providing more responsive and structured guidance. There is now greater Councillor participation at different stages of the application process. There are also much stronger links between council services and external partners to encourage and promote high quality development.
- 3.3 The 2010 Planning Review identified the need to make the authority’s Committee process more customer friendly. It also identified scope for increased officer delegation. The proposed change to the Committee name is intended to make the Committee’s role more easily understood. The changes to the scheme of delegation will improve public perception that all items being reported to Committee are being fully considered and addresses an existing problem where routine cases are often determined without discussion.
- 3.4 The recommended changes to the Terms of Reference and the Scheme of Delegation will allow officers to process routine applications much more quickly and will reduce the number of items being considered by the Committee. To demonstrate this, out of 104 planning applications considered by Committee in 2010/11, only half were referred because they were complex or sensitive. However, over 20% of items related to hot food uses, seven were reported because of a technical breach of policy while 13 applications were referred to Committee because of public or councillor interest. Eight applications were reported as a result of a request by a local Councillor. Had the

recommended Terms of Reference and Scheme of Delegation been in place during the 2010/11 year, the Committee would have determined an average of approximately six items per agenda. This compares with the actual average of almost ten items per meeting.

- 3.5 In the summer of 2012, consultation on the proposed changes was carried out with Members of Development Control Committee. As part of that process, Councillors broadly welcomed the proposed revisions to the Scheme of Delegation and Terms of Reference. There was an acknowledgement that the changes would allow the Committee to focus on the larger schemes. Councillors also commented that the existing requirement to refer all food and drink applications to Committee is no longer necessary.
- 3.6 With regard to the proposed name change, there was general support for a change of name, but it was suggested that the name of the Committee be changed to “Planning Committee” rather than “Development Management Committee”. The reasoning was that this would be easier for the public to understand the Committee’s role and that it captures the different elements of the planning function.
- 3.7 In August 2012, a report was taken to Development Control Committee to seek their formal support for the proposed changes. The Committee resolved to agree with the recommendation to support a change to the Scheme of Delegation and Terms of Reference, in line with the changes set out in Tables 1-9 (below). The Committee also supported the proposed change of the Committee’s name to “Planning Committee”.
- 3.8 In resolving to support the proposed changes, Development Control Committee requested that if the changes are agreed by City Council, a briefing note be produced summarising the new arrangements.

4 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 4.1 Consideration has been given leaving the delegation arrangements as existing. That option has been discounted because of the high number of routine applications that take up the Committee’s time and the impact on performance.
- 4.2 Consideration has been given to other local delegation models, including schemes used by other authorities. Some authorities, for

instance, have full officer delegation whereby only items that Councillors request are determined by Committee. Others have fewer delegated powers which means that meetings take longer and the Committee spends less time on the larger or sensitive schemes.

4.3 The Committee plays an important role in planning decision making, in regenerating the City and in shaping the built and natural environment. The proposed changes are considered to strike the right balance to promote good quality and publicly accountable decision making while supporting regeneration through consistent and timely decisions. The changes will ensure that the Committee is given more time to focus on its primary role in making decisions on large-scale and sensitive planning matters.

5 **BACKGROUND**

5.1 The Terms of Reference for Development Control Committee and Scheme of Delegation were adopted as part of the current Constitution (version 7.4). The current Scheme in relating to planning matters continues to reflect powers that were originally delegated to officers in 1990 and that have been varied a number of times in subsequent years.

5.2 The tables below set out the relevant wording from Part 2 of the Constitution along with proposed revisions and the reasons for these changes. Tables 1–3 relate to both the Committee terms of reference and the Scheme of Delegation and Tables 4-9 solely to the Scheme of Delegation to officers. The new drafting is around a core of a new Scheme located in Part 2 of Version 7.4 of the Constitution, which is improving access and governance within the authority.

5.3 **Table 1: Decisions contrary to policy, a Committee resolution or the advice of a statutory consultee**

Section 5 - D Committee Terms of Reference. Sub-section c (i) – page 11.	
Section 9 – Scheme of Delegation. Sub-section 9 (iv) (c) - page 109-110.	
Existing Text	<i>No application can be determined by officers where the decision would be:</i> <ul style="list-style-type: none"> • <i>Contrary to the provisions of the Development Plan;</i> • <i>Contrary to approved City Council planning policy;</i>

	<ul style="list-style-type: none"> • <i>Contrary to a previous decision of the Development Control Committee; or</i> • <i>Contrary to the recommendation of any statutory consultee.</i>
New Text	<p>No application can be determined by officers where the decision would:</p> <ul style="list-style-type: none"> • Result in the grant of planning permission that would be a significant departure from the adopted Development Plan; or • Result in the approval of an application for a similar scheme, on the same site, that has been previously refused by the Committee; or • Directly conflict with the recommendation of any external statutory consultee unless those concerns will be overcome by condition or planning obligation.
Reason for Change	<p>The revised wording allows delegated decisions to be made where there are minor conflicts with the wording of policies. It also allows minor changes to schemes previously approved by Committee to be determined under delegated powers. The new text will allow some decisions to be determined under delegated powers where there are objections from a statutory consultee, for instance where an issue is not considered significant or where the issue can be overcome by planning condition or obligation.</p> <p>These changes are predicted to result in between 5% and 10% fewer applications being reported to Committee, based on 2010/11 figures.</p>

5.4 **Table 2: Decisions that raise complex or sensitive issues**

<p>Section 5 - Development Control Committee Terms of Reference. Sub-section c (ii) – page 11.</p> <p>Section 9 – Scheme of Delegation. Sub-section 9 (iv) (d) - page 110.</p>	
Existing Text	<p><i>Items which give rise to complex or sensitive issues should be referred to Committee for determination. Applications for A3, A4 and A5 [food and drink] uses are considered to be sensitive in all cases. All planning applications made by, or on behalf of Councillors, are</i></p>

	<i>considered to be sensitive, requiring determination by the Development Control Committee.</i>
New Text	<p>Any application which gives rise to complex or sensitive issues should be referred to Committee for determination. For the purposes of this section, 'complex or sensitive' includes:</p> <ul style="list-style-type: none"> i) An application that has generated significant public interest that is contrary to the officer recommendation ii) A major application on a prominent site, where there are important land-use, design or heritage considerations iii) An application for the conversion of family housing to a house in multiple occupation (HMO) in an area where there is already a high concentration of HMOs and where the recommendation would conflict with adopted planning policies iv) An application in relation to which a Nottingham City Councillor has submitted a written request (giving valid planning reasons), within the statutory consultation period, for the application to be determined by Committee v) Where an application has been submitted by a Nottingham City Councillor or on behalf of a Nottingham City Councillor vi) An application that is recommended for approval, but where any planning obligations are proposed to be waived, or are substantially less than typically required by adopted planning policies
Reason for Change	<p>The existing wording does not define what 'complex or sensitive' means, which can be open to interpretation. The new wording is intended to provide some clarity and greater consistency in the treatment of applications, while retaining an element of discretion.</p> <p>The existing text requires all food and drink uses to be determined by Committee, irrespective of the recommendation or issues raised. This results in large numbers of applications for hot food take-away and restaurant uses being taken to Committee, the majority</p>

	<p>of which are acceptable and raise no significant issues. It is proposed to remove this category and for these applications to be taken to Committee only where the criteria for complex and sensitive above are met, for example where significant public interest is raised ((i) above), or where there is a request from a Councillor for an item to be determined by Committee ((iv) above).</p> <p>It is estimated that this change will result in 21% fewer applications being reported to Committee, based on 2010/11 figures.</p>
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5.5 Table 3: Decisions that result in S106 planning obligations

<p>Section 5 - Development Control Committee Terms of Reference. Sub-section c (iii) – page 11.</p> <p>Section 9 – Scheme of Delegation. Sub-section 9 (iv)(e) - page 110.</p>	
Existing Text	<i>Although applications requiring S106 agreements are often complex or sensitive, Development Control Committee has granted delegated powers to enter into agreements required in connection with straight forward planning applications, provided that such agreements are being negotiated in accordance with approved planning guidance. ‘Non-standard’ agreements remain a Committee matter.</i>
New Text	Delete section – covered by Table 2 above.
Reason for Change	The new text (see Table 2, (vi) above) makes it more explicit which types of applications requiring S106 planning obligations may be determined under delegated powers.

5.6 Table 4: Notices - Certificates of Lawfulness

<p>Section 9 – Scheme of Delegation. Table - Delegation 5. Page 115.</p>	
Existing Text	<i>In respect of planning enforcement notices, breach of condition notices, stop notices, <u>certificates of lawfulness of existing and proposed uses</u>, tree replacement and preservation notices, listed building repair notices, blight and purchase notices (and responses thereto), they are to be served only by the Director of Legal and</i>

	<i>Democratic Services or the Legal Services Manager (s), subject to him/her being satisfied with the evidence available.</i>
New Text	In respect of planning enforcement notices, breach of condition notices, stop notices, tree replacement and preservation notices, listed building repair notices, blight and purchase notices (and responses thereto), they are to be served only by the Director of Legal and Democratic Services or the Legal Services Manager(s), subject to him/her being satisfied with the evidence available.
Reason for Change	The existing text treats Certificates of Lawfulness as statutory notices whereas they are in fact a type of planning application. Further amendments are recommended below (Table 5) to deal with their determination and issue.

5.7 Table 5: Certificates of Lawfulness

Section 9 – Scheme of Delegation. Table - Delegation 62. Page 132.	
Existing Text	<i>62. Legal Services – Procedural arrangements for issue of decisions</i> <i>To determine procedural arrangements for the issue of all consents, refusals, decisions and notices on behalf of the Council under statutory power.</i>
New Text	62. Legal Services – Procedural arrangements for issue of Decisions 1. To determine procedural arrangements for the issue of all consents, refusals, decisions and notices on behalf of the Council under statutory powers. 2. In conjunction with the Corporate Director of Development or Director of Planning, to determine applications for Certificates of Lawfulness of Existing and Proposed Use and to issue or refuse such Certificates.

Reason for Change	Currently the Director of Legal and Democratic Services and Legal Services Managers determine such matters in consultation with the Corporate Director of Development. However these items were previously dealt with as statutory notices under the Constitution and the revised wording more accurately reflects that they are in fact applications.
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5.8 **Table 6: Determination of different types of applications**

Section 9 – Scheme of Delegation. Table - Delegation 208. Page 160.	
Existing Text	<p><u><i>Approval of Planning Consents – no objections of a planning nature</i></u></p> <p><i>To approve (including approvals subject to conditions) applications for planning consent, for listed building consent, for conservation area consent and to determine applications to vary or delete conditions either where there is no objection from a third party of a planning nature or where there are objections of a planning nature from third parties but the proposal is clearly in accordance with approved Council planning policies.</i></p>
New Text	<p><u>Determination of planning and other related applications</u></p> <p>To determine the following planning and other related applications, including approvals subject to conditions, with or without planning obligations:</p> <ul style="list-style-type: none"> i) Applications for planning permission ii) Applications for reserved matters approval iii) Applications for listed building consent iv) Applications for conservation area consent v) Applications to vary or remove planning conditions vi) Applications to discharge planning conditions vii) Applications for hazardous substances consent viii) Applications for advertisement consent ix) Applications for works to protected trees (including trees within a conservation area) x) Applications submitted by the City Council or

	<p>another local authority</p> <p>xi) Applications for non-material changes to an approved planning permission</p> <p>xii) Applications for minor material amendments to an approved planning permission</p> <p>xiii) Applications for prior approval</p> <p>xiv) Applications for Certificates of Lawfulness of Existing and Proposed Development (but not uses)</p>
Reason for Change	The existing text does not list all the types of applications that are processed. It also does not make it clear that applications may be refused in certain circumstances under delegated powers. The revised wording gives this flexibility.

5.9 Table 7: Non-material changes to planning permissions

Section 9 – Scheme of Delegation. Table - Delegation 209. Page 160.	
Existing Text	<i><u>Non-material changes to planning permission</u></i> <i>To approve non-material changes to planning permission</i>
New Text	Delete section – covered by Table 6 (xi and xii), above.
Reason for Change	The current wording of Delegation 209 does not allow applications for non-material changes to planning applications to be refused, which is an anomaly needing to be corrected. Section 209 also does not give delegated authority for officers to determine applications for minor material amendments. It is therefore proposed that this section be deleted and that this application type be incorporated into Delegation 208 xi) and xii) – see Table 6 above.

5.10 Table 8: Determination of local authority planning applications

Section 9 – Scheme of Delegation. Table - Delegation 212. Page 161.	
Existing Text	<i><u>Planning Applications by the Local Authority</u></i> <i>Power to determine applications for planning permission made by a local authority, alone or jointly with another</i>

	<i>person under Section 316 of the 1990 Act as well as the Town and Country Planning General Regulations 1992 (to approve (including approvals subject to conditions) applications for planning consent either where there is no objection of a planning nature from third parties or where there are objections of a planning nature from third parties but the proposal is clearly in accordance with approved Council planning policies).</i>
New Text	Delete section – covered by Table 6 (x) above.
Reason for Change	It is proposed that this section be replaced by Delegation 208 x) (see Table 6) which will allow these applications to be determined under delegated powers subject to the same criteria as set out for other types of applications.

5.11 Table 9: Environmental Impact Assessment

Section 9 – Scheme of Delegation. Table - Delegation 218. Pages 162-3.	
Existing Text	<i><u>Environmental Impact Assessments</u> To adopt screening and scoping opinions</i>
New Text	<u>Environmental Impact Assessments (EIA)</u> <ul style="list-style-type: none"> i) To screen development proposals, in response to requests being made by developers, prior to the submission of a planning application, to determine whether an EIA is required; ii) To screen planning and other relevant applications to determine whether an EIA is required; iii) Where a scheme is determined to be EIA development, to produce a scoping opinion.
Reason for Change	The wording of Delegation 218 needs to be revised to accommodate the need to deal with requests for screening and scoping opinions made before applications are submitted, and also to make it explicit that officers have delegated powers to screen applications following their submission.

6 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY)

- 6.1 There are no direct financial implications or value for money issues arising from this report.

7 RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS, CRIME AND DISORDER ACT IMPLICATIONS)

- 7.1 While the proposed changes have received the support of Development Control Committee in August 2012, these are matters for determination by Full Council under the Constitution.
- 7.2 There is an element of risk involved at all stages of the Planning process as decisions are open to challenge. It is important to ensure that such decision making processes are robust and reasoned whilst ensuring that decisions are made at the appropriate level to ensure an effective and efficient delivery of service. The suggested amendments to the Constitution seek to achieve this balance.

8 EQUALITY IMPACT ASSESSMENT (EIA)

- 8.1 Not needed (report does not contain proposals or financial decisions).

9 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

- 9.1 Nottingham City Council Planning Services Review, Final Report (Addison & Associates), August 2009

10 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

- 10.1 Report to Development Control Committee, 22 August 2012
- 10.2 Item 44 of the Minutes of Development Control Committee, 22 August 2012 (published 19 September 2012)
- 10.3 Nottingham City Council Constitution Version 7.4, July 2012

10.4 Killian Pretty Review (Planning Applications: A faster and more responsive system]) Final Report, November 2008

COUNCILLOR JON COLLINS
LEADER OF THE COUNCIL