

TO: PLANNING & REGULATORY COMMITTEE

DATE: 26 JUNE 2024

BY: PLANNING DEVELOPMENT MANAGER

DISTRICT(S): ALL

ELECTORAL DIVISION (S):
ALL

PURPOSE: FOR INFORMATION

GRID REF: N/A

TITLE: CONSTITUTION REVIEW – PLANNING ENFORCEMENT AND DELEGATED AUTHORITY

SUMMARY

This report sets out proposed changes to the Constitution to give further delegated authority to relevant managers within the Planning Group in relation to Enforcement matters and to increase resilience in the delegated sign off process for planning applications. It is also proposed to remove some redundant elements in the existing Constitution.

RECOMMENDATION

It is recommended that the Committee note the proposed changes and agree that these are presented to full Council for agreement.

1 BACKGROUND

- 1.1 The Council's Constitution sets out in Section 3, Part 3A the delegated authority required to take enforcement action to address serious breaches of planning control pursuant to the Council's powers under The Town and Country Planning Act 1990 (TCPA). As set out in the Constitution, the Director of Law and Governance is instructed to take enforcement action in terms of serving Enforcement Notices , Stop Notices and Temporary Stop Notices under the TCPA and initiating appropriate legal proceedings
- 1.2 The Planning Enforcement. Team is currently undergoing a number of changes and reviewing its own ways of working. This review was a key part of the Planning Group's recent Service Improvement Plan and remains a focus of the on-going Optimising Planning and Placemaking project. This review may result in an initial increase in notices being served as older cases are actioned and in the long term is aimed at taking action at the earliest opportunity. It would assist if managers within the Planning Group, in addition to the powers delegated to the Director of Law and Governance, were able to take enforcement action as described above.
- 1.3 The Constitution, within in the same section, delegates authority to senior managers and team managers within the Planning Development Team to sign off decisions on planning applications. This results in a limited number of officers who are able to

review reports and sign off delegated decisions for issuing. At times when those officers may be absent or dealing with other high priority matters, this can result in delays to the review and sign off process putting at risk the ability to issue decisions within the necessary timeframes.

- 1.4 When previous constitutional changes have been made some older elements of the constitution have ceased to be necessary but appear not to have been formally deleted. In order to remove confusion, it is also proposed to delete these now unnecessary elements.

2. PROPOSED CHANGES

2.1 Planning Enforcement Delegated Authority

It is proposed to give delegated authority to managers within the Planning Group, while preserving the authority of the Director of Law and Governance, to take enforcement action and serve the specified notices. This streamlining of the process seeks to enable the Enforcement Team to increase the throughput of work, and take action as early as possible. It is considered appropriate for managers within the Planning Group to have this delegated authority as the team responsible for Planning Enforcement. It is also proposed that the Planning Enforcement Team are no longer required to consult Legal Services where they do not consider it expedient to initiate enforcement action and thereafter to close a case. It is considered that this is a matter of planning judgement and should be the sole responsibility of that team. This change would enable the speedier closure of cases where no further action is warranted, helping to drive efficiency and performance improvements.

- 2.2 As part of these changes, and in line with the wider review of the Enforcement Team's ways of working, officers will engage with Legal colleagues at the earliest opportunity. It is therefore proposed to establish a surgery style meeting on a 6 weekly basis, building on previous arrangements. Planning Enforcement officers would be able to bring a case at any stage of investigation to this meeting to ask specific queries of legal colleagues to ensure these points are fully considered in the eventual decision of whether or not to proceed with formal action. This meeting can also be then used to discuss cases where formal action is being proposed to ensure that any legal points are addressed. However, the final decision as to whether or not formal action will be taken is for the Planning Enforcement Team and senior managers within the Planning Group.

- 2.3 Within the Planning Enforcement Team when it is determined that formal action should be taken a decision making report will be prepared by the case officer and signed off by the Planning Enforcement Team Leader or Planning Development Manager. This report should be informed by the discussions held with Legal Services as part of the regular surgery meetings or, where considered necessary by the Planning Enforcement Team Leader, during a formal consultation with Legal Services. This will continue to ensure a robust and clear decision making process. Once this report has been agreed by the relevant manager, then the case officer and senior officers within the Planning Enforcement Team would draft and serve the necessary notice at the earliest opportunity, with the intention of increasing the potential of apprehending a breach and remedying the planning harm as soon as possible. This is the ultimate purpose of Planning Enforcement and new processes should assist this.

2.4 Planning Application Delegated Authority

It is also proposed to enable Principal Planning Officers within the Development Management teams to sign off delegated decisions. These are the most experienced officers within the Service who are able to review the reports and recommendations of more junior officers given their own experience and knowledge. A process would be established within the Development Management Team that sets out which types of application Principal Planning Officers would be able to sign off, ensuring that the most controversial or complex are still dealt with by Team Leaders or senior managers. Giving delegated authority to these roles will increase resilience within the team to enable decisions to be reviewed and signed off promptly. It also would offer a professional development opportunity for the officers in those roles

2.5 Other Changes

The references to “minor” applications within the constitution refers to the delegated authority set in an earlier version of the Constitution and no longer remain relevant. It is therefore proposed to delete this to remove any potential confusion.

3 **CONCLUSION**

- 3.1 The proposed changes will help to improve the speed, efficiency and resilience of the team, helping to drive improvement in performance within the Planning Group in terms of both Planning Enforcement and Planning Application decisions. It is recommended that the Committee note and agree to these changes, subject to their final approval at full Council.

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BACKGROUND PAPERS:

Appendix 1 – Current Constitution (extract of Section 3, Part 3A)
Appendix 2 – Proposed changes

Appendix 1

Section 3, Part 3A Specific Delegation to Officers

The specific functions of the County Council (executive and non-executive) set out in column 3 below are delegated to the corresponding officers listed in column 4 (or any temporary replacement post holder nominated in accordance with paragraph 2.3 of the Scheme) subject to the requirements and limits of this Scheme of Delegation.

ENVIRONMENT, TRANSPORT AND INFRASTRUCTURE

No	Service area	FUNCTIONS DELEGATED	TITLE OF POSTHOLDER
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Key to abbreviations:

EPA - Environmental Protection Act 1990

TCPA - Town & Country Planning Act 1990 (as amended)

No	Service area	FUNCTIONS DELEGATED	TITLE OF POSTHOLDER
EAI47	Planning & Placemaking	Where fewer than 5 objections have been received and no request has been made by the local member or a member of the Planning & Regulatory Committee for the application to be determined by that Committee, to determine planning applications for minerals, waste development and County Council development which comply with the development plan and national policies	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader
EAI48	Planning & Placemaking	Where fewer than 5 objections have been received and no request has been made by the local member or a member of the Planning & Regulatory Committee for the application to be determined by that	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader
		Committee, and after consultation with the Chairman or, in his/her absence, Vice-Chairman of the Planning & Regulatory Committee, to determine planning applications for minerals, waste development and County Council development which do not comply with the development plan and national policies	
EAI49	Planning & Placemaking Environment	To authorise representation of the Council at Public Inquiries	Director Planning & Placemaking Planning Group Manager Natural Capital Group Manager Access Team Manager Strategic Network Resilience Manager Flood Risk Planning and Consenting Team Leader
EAI50	Planning & Placemaking	To determine whether county development applications meet the criteria of 'minor'*	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader
EAI51	Planning & Placemaking	To determine whether minerals and waste applications meet the criteria of 'minor'*	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader

* For the purposes of EAI50 and EAI51 'minor' is defined as:

- (i) ancillary development to an existing use; or (ii) details pursuant to a permission; or (iii) variation or deletion of conditions previously imposed

EAI59	Planning & Placemaking	To determine whether any powers in S196A of the TCPA should be exercised.	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader Planning Enforcement Team Leader
EAI60	Planning & Placemaking	To instruct the Director of Law & Governance to take enforcement action and initiate the following legal proceedings where appropriate: (a) Issuing Enforcement Notices under the TCPA Section 172 (b) Serving Stop Notices under the TCPA Section 183 (c) Applications for injunctions under the TCPA Section 187B (d) Prosecutions arising from failure to comply with (a) and (b) above (e) Service of a temporary stop notice under section 171E of the TCPA (as amended)	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader
EAI61	Planning & Placemaking	Following consultation with the Director of Law & Governance to determine not to initiate enforcement action under TCPA Act Section 172 in the case of unauthorised minerals or waste related development irrespective of the requirement for an environmental impact assessment.	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader
EAI62	Planning & Placemaking	To negotiate and monitor a scheme of remediation in relation to waste related development where the powers contained in EAI63 above have been exercised.	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader
EAI63	Planning & Placemaking	To instruct the Director of Law & Governance to issue and serve: - (a) Breach of Condition Notices under the TCPA Section 187A (b) To instruct the Director of Law & Governance to undertake prosecutions arising from failure to comply with (a), (c) and (d). To issue and serve: (c) Planning Contravention Notices under the TCPA Section 171C (d) Notices requiring information under the TCPA Section 330	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader Planning Enforcement Team Leader
EAI64	Planning & Placemaking	Under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (or where relevant the appropriate predecessor regulations) to: (a) Adopt and issue screening opinions in response to requests made under Regulation 6. (b) Adopt and issue screening opinions under Regulation 8, where a submitted application is not accompanied by an Environmental Statement but falls within the scope of Schedule 2 of the Regulations.	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader Natural Environment & Assessment Team Manager Strategic Network Resilience Manager Flood Risk Planning and Consenting Team Leader

EAI75	Planning & Placemaking	To determine whether a proposal constitutes permitted development under any part other than Part 17 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 SI 2015 No. 596.	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader
EAI76	Planning & Placemaking	To determine an application for postponement or a request for a minor extension of time for the submission of new conditions in the case of the first, second on subsequent Periodic Review Date of Mineral Planning Permissions pursuant to the Environment Act 1995.	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader
EAI77	Planning & Placemaking	To instruct the Director of Law & Governance to issue and serve: (a) Revocation Orders under S97 of the Town and Country Planning Act 1990 (b) Modification Orders under S97 of the Town and Country Planning Act 1990 (c) Prohibition Orders under paragraph 3 of Schedule 9 of the Town and Country Planning Act 1990 (d) Suspension Orders under paragraphs 5 and 6 of Schedule 9 of the Town and Country Planning Act 1990	Director Planning & Placemaking Planning Group Manager Planning Development Manager

Appendix 2

EAI47	Planning & Placemaking	Where fewer than 5 objections have been received and no request has been made by the local member or a member of the Planning & Regulatory Committee for the application to be determined by that Committee, to determine planning applications for minerals, waste development and County Council development which comply with the development plan and national policies	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader Principal Planning Officer
EAI48	Planning & Placemaking	Where fewer than 5 objections have been received and no request has been made by the local member or a member of the Planning & Regulatory Committee for the application to be determined by that Committee, and after consultation with the Chairman or, in his/her absence, Vice-Chairman of the Planning & Regulatory Committee, to determine planning applications for minerals, waste development and County Council development which do not comply with the development plan and national policies	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader Principal Planning Officer
EAI50	Planning & Placemaking	To determine whether county development applications meet the criteria of 'minor'*	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader
EAI51	Planning & Placemaking	To determine whether minerals and waste applications meet the criteria of 'minor'*	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader
EAI60	Planning & Placemaking	To instruct the Director of Law & Governance to take enforcement action and initiate the following legal proceedings where appropriate: (a) Issuing Enforcement Notices under the TCPA Section 172 (b) Serving Stop Notices under the TCPA Section 183 (a) Applications for injunctions under the TCPA Section 187B (b) Prosecutions arising from failure to comply with an Enforcement Notice, Breach of Condition Notice, Planning Contravention Notice, Notice requiring information under the TCPA Section 330, Temporary Stop Notice or Stop Notice (e) Service of a temporary stop notice under section 171E of the TCPA (as	Director Planning & Placemaking Planning Group Manager Planning Development Manager Planning Development Team Leader Planning Enforcement Team Leader

		amended)	
New	Planning & Placemaking	<p>Following consultation with the Director of Law & Governance To take enforcement action , issue and serve the following notices where appropriate:</p> <p>(a) Enforcement Notices under the TCPA Section 172</p> <p>(b) Stop Notices under the TCPA Section 183</p> <p>(c) of a temporary stop notice under section 171E of the TCPA (as amended)</p> <p>(d) Breach of Condition Notices under the TCPA Section 187A</p> <p>(e) Planning Contravention Notices under the TCPA Section 171C</p> <p>(f) Notices requiring information under the TCPA Section 330</p> <p>(g) Apply for a Planning Enforcement Order</p> <p>(h) Enforcement Warning Notice under</p>	<p>Director of Law & Governance</p> <p>Director Planning & Placemaking</p> <p>Planning Group Manager</p> <p>Planning Development Manager</p> <p>Planning Development Team Leader</p> <p>Planning Enforcement Team Leader</p>
EAI61	Planning & Placemaking	<p>Following consultation with the Director of Law & Governance To determine not to initiate enforcement action under TCPA Section 172 in the case of unauthorised minerals or waste related development irrespective of the requirement for an environmental impact assessment.</p>	<p>Director Planning & Placemaking</p> <p>Planning Group Manager</p> <p>Planning Development Manager</p> <p>Planning Development Team Leader</p> <p>Planning Enforcement Team Leader</p>
EAI63	Planning & Placemaking	<p>To instruct the Director of Law & Governance to issue and serve:</p> <p>(a) Breach of Condition Notices under the TCPA Section 187A</p> <p>(b) To instruct the Director of Law & Governance to undertake prosecutions arising from failure to comply with (a), (c) and (d).</p> <p>To issue and serve:</p> <p>(c) Planning Contravention Notices under the TCPA Section 171C</p> <p>(d) Notices requiring information under the TCPA Section 330</p>	<p>Director Planning & Placemaking</p> <p>Planning Group Manager</p> <p>Planning Development Manager</p> <p>Planning Development Team Leader</p> <p>Planning Enforcement Team Leader</p>

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