

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	PLANNING COMMITTEE	17 APRIL 2019	5
SCHEME OF DELEGATION			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

The report sets out proposed changes to the scheme of delegated powers under which decisions on certain planning and other applications are made by or under the authority of the Director of Development Services. The changes will clarify that prior determination applications, applications for certificates of lawfulness, applications for non-material amendments to planning permissions and applications to discharge planning conditions fall within the delegations to the Director.

The report also requests that authority to issue community protection notices be delegated to the Director of Development Services where such notices are in the scope of the council's activities as local planning authority.

RECOMMENDATIONS

1. Make the changes to the delegated powers of the Director of Development Services set out in paragraph 3.
2. Delegate authority to the Director of Development Services to issue community protection notices under the Anti-Social Behaviour, Crime and Policing Act 2014, where the conduct concerned falls within the council's remit as local planning authority.

SUMMARY OF PREVIOUS DECISIONS

Development Control Committee, 19 November 2008: 1. *To agree to the changes to the delegated powers of the Director of Strategic Development subject to the word "minor" being inserted after the words "except those which are" (paragraph 2.4 refers) and inserting the words "or where the Director proposes to refuse planning permission" at the end of the paragraph 2.4.*

CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services (Value for Money)	✓
Delivering the services that customers expect of an excellent council (Clean and Green)	✓
Working with all partners (Vibrant Economy)	
To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live)	✓
Promoting Fylde as a great destination to visit (A Great Place to Visit)	✓

REPORT

INTRODUCTION

1. This report recommends some minor changes to the scheme of delegation under which planning and other applications are decided by the Director of Development Services under powers delegated by the committee. It also recommends that power to issue community protection notices be delegated to the Director of Development Services where the conduct giving rise to the notice is within the scope of the council's responsibilities as local planning authority.

THE SCHEME OF DELEGATION

2. The scheme of delegation in its present form was adopted in 2008 and has not been subject to any material change since then. It is intended to make sure that applications which are non-contentious, administrative or technical are dealt under delegated powers, with committee time being reserved for applications which are significant because of their nature, size, or sensitivity. It gives a significant role to ward members and parish and town councils in deciding which applications are dealt with under delegated powers and which by the committee.
3. The scheme as it presently stands is set out below, with the proposed changes underlined, and commentary on them highlighted in grey.

Introduction

The objective of the scheme of delegation is to speed up the decision making process by allowing key officers to determine the majority of planning and related applications. Only those that are considered major applications will be presented to Planning committee and any which are referred to in the scheme below.

Delegated applications

(1) Subject to paragraph (2), decisions on the following matters are delegated to the Director:

- (a) Planning applications*
- (b) Applications for certificates of lawfulness*
- (c) Advertisement consent applications*
- (d) Hazardous substance applications*
- (e) Listed buildings applications*
- (f) Telecommunications applications and prior determinations*
- (g) ~~Agricultural~~ All other prior determinations*

Commentary: Changes in planning legislation over the past few years have expanded the scope of matters requiring prior determinations. These prior determinations are exclusively technical in nature and are presently dealt with under sub-paragraph (h) immediately below. The recommended change to the scheme would add clarity.

(h) any other application or matter of a similar nature to (1)(a) to (1)(g)

(i) Approval of non-material amendments to planning approvals

Commentary: Applications for approval of non-material amendments are, by definition, not material to the development. If such an application disclosed a material amendment, it could not be approved under that procedure.

(j) Applications to discharge planning conditions

Commentary: Applications to discharge planning conditions require a technical assessment of whether a condition has been complied with, and do not engage planning judgment.

(2) notwithstanding paragraph (1), the Director may not exercise delegated authority to take decisions on the following matters:

- (a) Any application falling within (1)(a) to (1)(h) where a Ward Councillor has required that delegation be not exercised provided that their request has been accompanied by adequate written reasons for the non-exercise of the delegation and has been made within the time scale in paragraph (12).*
- (b) Any application falling within (1)(a) to (1)(h) where the chairman or vice-chairman of the Planning Committee has required that delegation be not exercised, provided that their request has been accompanied by adequate written reasons for the non-exercise of the delegation.*

(c) Any application falling within (1)(a) or 1(c) to (1)(e), or an application that falls within (1)(h) because of its similar nature to such an application, that the Director proposes to approve and on which a parish or town council for the application site has submitted representations on justifiable planning grounds contrary to that proposed decision and has requested that the decision be considered by the committee.

Commentary: This change removes certificate of lawfulness applications and prior determinations from the scope of applications which parish or town councils can request be brought before the committee for determination. These matters are not required to be consulted upon, do not engage planning judgment and are not generally appropriate for committee determination. The requirement for a request by a parish or town council to support any request by representations on justifiable planning grounds effectively excludes these categories of applications already, since they are not matters of planning judgment, so the change is merely clarifying the present position.

(d) Major Planning applications, except those which are minor revisions of applications previously considered by the committee and where neither the Director, a parish or town council or any other consultee has objected to the proposed revision or where the Director proposes to refuse planning permission.

(e) Any application for the total or partial demolition of a Listed Building, where the proposed demolition would amount to more than 55% of Listed Building.

(f) Any application which is the same or substantially the same as a previous application that was refused by the Planning Committee and where the Director proposes to grant permission.

(g) Any application that the Director considers has significant, borough-wide importance or has been the subject of significant public interest.

(h) Any application for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted where the previous planning permission was granted by the Planning Committee.

(3) For the purposes of paragraph (2)(c), a representation will be taken to be on justifiable planning grounds unless the Director advises the parish or town council in writing that in his opinion the representation is unreasonable. In forming his opinion, the Director will take account of the guidance on awards of costs as explained in the National Planning Practice Guidance.

(4) Notwithstanding paragraph (1), the Director may only exercise delegated authority to make decisions on any application where the council or a council employee is an applicant or an owner of the application site after consultation with the chairman and vice-chairman of the Planning Committee.

(5) Nothing in paragraph (2) or (4) above will prevent the Director exercising his delegated authority to take decisions in respect of applications under part 16 of schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 for determination as to whether prior approval is needed for the siting and appearance of development by or on behalf of an electronic communications code operator.

Responses to consultations

(6) The Director has delegated authority to respond to consultations from bodies such as local authorities, and utility and infrastructure providers, and government agencies.

Environmental impact assessments

(7) The Director has delegated authority to deal with all matters relating to scoping reports and screening opinions in connection with environmental impact Procedure.

Interpretation

(8) "Listed Building" has the same meaning as in the Planning (Listed Buildings and Conservation Areas) Act 1990.

(9) “Major Planning Application” has the same meaning as in paragraph 2 of The Town and Country Planning (Development Management Procedure)(England) Order 2015.

(10) “Ward Councillor” means a councillor representing a ward that includes the application site or any ward that abuts the application site.

(11) “Director” means the Director of Development Services.

Procedure

(12) All Councillors will be circulated with a weekly list of planning applications, published and dispatched each week. Councillors will have 21 days from the date of dispatch of the list to require under (2)(a) that the delegation to the Director be not exercised.

(13) A weekly list of all those applications where the Director has exercised his delegated decision-making power will be distributed to all councillors each week.

(14) A rigorous scrutiny process will ensure that no application will be decided by its case officer and that only those applications that qualify to delegated decision-making go forward to be decided under delegated powers. The case officer will present a simple report to the Development Manager or Senior Development Officer, including a clear statement why the decision meets the criteria for delegation who will sign off the report and determine the application on behalf of the Director. If the Development Manager is the case officer, he will pass the report to the Director of Head of Planning and Housing for decision. A pro forma completed by the case officer will assist with the scrutiny process.

COMMUNITY PROTECTION NOTICES

4. Community protection notices (‘CPNs’) may be issued by the council if it is are satisfied, on reasonable grounds, that the conduct of an individual, business or organisation is having a detrimental effect on the quality of life of those in the locality; is persistent or continuing in nature; and is unreasonable¹. A CPN can require that the recipient does specified things, stop doing specified things, or takes reasonable steps to achieve specified results. Failure to comply with a CPN is a criminal offence, and can result in the issue of a fixed penalty notice.
5. The power to issue a CPN is wide enough, where the tests set out in paragraph 4 are met, to cover planning contraventions. CPNs can therefore be a further means of enforcement available to the council as local planning authority. They may be particularly relevant to enforcement activity like the control of unlawful advertisements in the streetscene.
6. It would be sensible if the power to issue CPNs in relation to planning and related breaches was delegated to the Director of Development Services². This would bring CPNs in line with all other forms of planning enforcement, which are presently delegated to the director.

IMPLICATIONS	
Finance	There are no financial implications arising directly from this report.
Legal	Included in the report
Community Safety	There are no implications arising directly from this report.
Human Rights and Equalities	There are no implications arising directly from this report.
Sustainability and Environmental Impact	There are no implications arising directly from this report.
Health & Safety and Risk Management	There are no implications arising directly from this report.

¹ Anti-social Behaviour, Crime and Policing Act 2014, section 43.

² Power to take any action under the 2014 act is presently (with the exception of making public spaces protection orders) delegated to the Chief Executive and to the Director of Resources, following consultation with the relevant committee chairman. That delegation will remain in place alongside the proposed delegation to the Director of Development Services.

LEAD AUTHOR	CONTACT DETAILS	DATE
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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Council constitution		https://fylde.cmis.uk.com/fylde/DocumentsandInformation.aspx Town Hall, Lytham St Annes