

Name of meeting: Corporate Governance and Audit

Date: 14th July 2023

Title of report: Planning Scheme of Delegation (SoD) and Planning Committees

Purpose of report: To provide information for CGA on the changes proposed to both the Planning Scheme of Delegation (SoD) and to Planning Committees

Key Decision - Is it likely to result in spending or saving £500k or more, or to have a significant effect on two or more electoral wards? Decisions having a particularly significant effect on a single ward may also be treated as if they were key decisions.	No
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)</u>?	No
The Decision - Is it eligible for call in by Scrutiny?	No The decision to change the SoD and change Planning Committees is a Full Council decision, not an Executive decision
Date signed off by <u>Strategic Director & Name</u> Is it also signed off by the Service Director for Finance? Is it also signed off by the Service Director for Legal Governance and Commissioning?	David Shepherd - 29th June 2023 Dean Langton – 3 July 2023 Julie Muscroft – 4 July 2023
Cabinet member portfolio	Cllr Graham Turner

Electoral wards affected: All

Ward councillors consulted: Briefings have been provided to Labour, Conservative and Liberal Democrat Groups

Public or private: Public

Has GDPR been considered? Yes

1. Summary

This report is designed to help explain the reasons for updating the 2013 Scheme of Delegation for Planning and the changes to Planning Committees. For information - Planning decision making and committee structures at Kirklees Council are a decision for Full Council who must vote to change the Constitution related to Planning decision making matters. It is a requirement for all Councils with Local Planning Authorities to have a Planning Committee. The types of planning applications decided at the Planning Committee are subject to the Scheme of Delegation.

2. By way of background, these are the most significant Planning milestones since the 2013 Scheme of Delegation was adopted:

2015	Introduction of Strategic Planning Committee alongside existing Sub Committees
2015	Adoption of Development Management Charter (How and Who is consulted on planning applications)
2017	Adoption of Officer Member Planning Communication Protocol
2019	Adoption of Local Plan
2019-2023	Adoption of Supplementary Planning Documents and Guidance Notes
2022	Adoption of Local Validation Checklist for Planning Application

3. Information required to take a decision

A review of the existing Scheme of Delegation and Planning Committee structures has been undertaken. Engagement with the 3 main political groups has been done to gain member feedback to the changes proposed.

In summary the changes proposed are:

- To update the Scheme of Delegation to revise the conditions under which applications are decided at Committee.
- To move from the current 3 committee structure to 2 planning committees each meeting every 6 weeks.
- To introduce an expectation that Ward Councillors who refer an application to committee attend in person at the meeting (or send a ward councillor colleague).
- Within the Highway and Transportation scheme of delegation in relation to Definitive Map Modification Orders (DMMO) enable Planning Committee Chairs to consider if matters do not require determination by the planning committee and can remain delegated to the relevant Strategic Director.

At Kirklees the Planning Service performance is well above all the Governments targets for planning decision making this is despite challenges with the complexity of planning. One significant area of concern however is the length of time it takes for planning decisions to be made. The main reasons for the length of time each application takes is due to the volume and complexity of the

applications. Kirklees is in the top 20 of busiest planning services in the country. The amount of time spent considering, assessing and improving planning applications to help arrive at a positive outcome, is not covered by the cost of the planning application fee and long running applications cause strain and stress for communities and applicants.

To help focus Council resources, the proposals here are to update the Scheme of Delegation so that applications are decided at Committee only where they:

- Attract significant representations from the public against the officer recommendation, or
- Have been referred by Ward Councillors to a planning committee, or
- Significant Departures from the Development Plan and cases where applicants request reduced S106 contributions will also be referred to Committee.

This will reduce by around an estimated third of current cases going needing to go to Planning Committees under the current scheme of delegation. This will help to speed up the planning process. It will also allow officer time to be redeployed to other cases and projects and save money for both the Council and applicants. It will ensure communities are active in the planning process by focusing the time needed at committee on applications which are most important to them. The new Scheme of Delegation and Committees will allow Committees to focus on the planning applications which generate significant public interest.

By reducing the volume of applications needing a planning committee decision, it is possible to reduce the number and frequency of Committees. Currently there are 3 planning committees the proposal is to have 2 planning committees:

- The Strategic Planning Committee - focus on Major Planning Applications, and
- The District Wide Planning Committee - focused on Minor and Other (Householder) Applications.

The Strategic Planning Committee (Major planning applications) and the District Wide Planning Committee (Minor and Other planning applications) will have equal status and their terms of reference (as amended) will include responsibilities for planning, highways and transportation matters.

Each new Committee would meet every 6 weeks in person.

Under the new Scheme of Delegation 2023 Ward Councillors who refer an application to committee are expected to attend in person at the meeting (or send a ward councillor colleague). By exception virtual attendance by a ward councillor who referred an application can be appropriate with the agreement of the Chair of the Committee.

There are no changes proposed to public or Councillor speaker rights at the new Planning Committees.

In relation to the changes to the Definitive Map Modification Orders (DMMO) a clause has been inserted into the Scheme of Delegation to enable the relevant

Chair of the Planning Committee to consider if the making of a DMMO can remain delegated to the Strategic Director. This will allow instances where there are no objections from interested parties or ward councillor referrals for DMMO to be decided by Officers. This will help speed up the process for DMMO's in instances where there is no need for a committee decision because there has been no public interest in the case.

3.1 Proposed new wording within the Scheme of Delegation

Below is the proposed version of the elements of the Councils constitution which would be amended to reflect the new Scheme of Delegation the new Planning Committee structures, and changes to decision making for DMMOs.

(Appendix A and Appendix F contains the text from the current Scheme of Delegation with 'tracked changes' to show all proposed amendments).

Scheme of Delegation 2023

Strategic Director Growth and Regeneration

The holder of the post of Strategic Director Growth and Regeneration shall be responsible for the strategic direction and overall management and delivery of the functions and responsibilities of the Growth and Regeneration Directorate and, without prejudice to the foregoing, shall have power to discharge the following functions and responsibilities, subject to compliance with the Constitution, FPRs, CPRs, approved policies of the Council or the Executive (as appropriate) and all legal requirements:

Planning and Development

A. Development Management, Strategic and Neighbourhood Planning and Highways Transportation

Non-Executive Functions

1. All functions and responsibilities of the Council as;

- Local Planning Authority (within the meaning of Section 1(2) Town and Country Planning Act 1990, Section 81 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and Regulation 2 of the Hedgerow Regulations 1997));*
- Mineral Planning Authority (within the meaning of Section 1(4) of the Town and Country Planning Act 1990);*
- Relevant Authority (within the meaning of the Part 8 of the Anti-Social Behaviour Act 2003);*
- Hazardous Substances Authority (within the meaning of Section 1 of the Hazardous Substances Act 1990);*
- Local Housing Authority (within the meaning of Section 1 of the Housing Act 1985);*
- Acquiring Authority (within the meaning of section 7(1) of the Acquisition of Land Act 1981) relating to development management, strategic and neighbourhood planning, high hedges and hazardous substances included*

within the terms of reference of the Strategic Planning Committee (Major Planning Applications) and District Wide Planning Committee (Minor and Other Planning Applications) except:

- (1) For any Major Planning Application (Full or Outline) which receives a significant number of representations against the officers recommended decision or if a Ward Members refers a Major Planning Application to Strategic Planning Committee with the Chairs agreement or if a significant Departure from the development Plan (Local Plan 2019 or any future updates) or any reduction in S106 Planning obligations from Local Plan 2019 (or any future updates).*
- (2) Any Minor or Other Planning applications which receives a significant number of representations against the officers recommended decision or if a Ward Members refers a Minor or Other Planning Application to the District Wide Planning Committee (Minor and Other planning applications) with the Chairs agreement or if a significant Departure from the Development Plan (Local Plan 2019 or any future updates).*
- (3) Applications for the stopping up and diversion of footpaths, bridleways and restricted byways under Section 257 of the Town and Country Planning Act 1990 where;
a) any member so requests in relation to an application within their ward. The member shall specify in writing his/her reasons for making the request; or
b) there is no majority support for the proposed action by the three ward members (and for the purposes of this paragraph, the non-response of any ward member shall not be treated as opposition to any proposal).*

Scheme of Delegation 2023

Strategic Director Environment and Climate Change

The holder of the post of Strategic Director Environment and Climate Change shall be responsible for the strategic direction and overall management and delivery of the functions and responsibilities of the Environment and Climate Change Directorate and without prejudice to the foregoing, shall have power to discharge the following functions and responsibilities, subject to compliance with the Constitution, FPRs, CPRs, approved policies of the Council or the Executive (as appropriate) and all legal requirements:

A. Highways Transportation and Public Rights of Way matters Non-Executive Functions

- 1. All relevant functions and responsibilities of the Council as:
 - *Local Highway Authority (within the meaning of s.1 Highways Act 1980);*
 - *Surveying Authority (within the meaning of the Wildlife and Countryside Act 1981;*
 - *Access Authority (within the meaning of Section 1(2) of the Countryside and Rights of Way Act 2000;*
 - *Street Authority (within the meaning of Section 49 of the New Roads and Street Works Act 1991);**

- *Traffic Authority (within the meaning of Section 121A of the Road Traffic Regulation Act 1984).*

relating to highways transportation, public rights of way and highways development management included within the terms of reference of the Planning Committees.

(1) Matters are referred to the relevant Planning Committee as specified in paragraph 3 of the General Provisions and in the following cases:

i) where the delegated officer so decides:

a) with the agreement of the Chair of the relevant Planning Committee; or

b) due to the significant volume of local opinion (including through Parish/Town Councils);

ii) where the Chair of the relevant Planning Committee so requests;

iii) where any member so requests in relation to any matter within their ward. The member shall specify in writing his/her reasons for making the request;

iv) where there is no majority support for the proposed action by the three ward members (and for the purposes of this paragraph, the non-response of any ward member shall not be treated as opposition to any proposal);

v) in respect of all applications for the modification of the Definitive Map and Statement under the Wildlife & Countryside Act 1981 (or any legislation revoking or re-enacting that Act with or without modification) unless the chair of the relevant planning committee considers matters do not require determination by the planning committee and can remain delegated to the relevant Strategic Director.

3.2 Proposed new wording for Planning Committee Terms of Reference

3.2.1 Strategic Planning Committee

Below are the details for the proposed terms of reference for the Strategic Planning Committee (Major Planning Applications).

(Appendix B contains the text from the current Terms of Reference with 'tracked changes' to show all proposed amendments.).

Strategic Planning Committee (Major Planning Applications)

Membership 7 Members of the Council Including the Chairperson

Terms of Reference

Delegated authority in respect of all Planning, Development Management and Highways functions which are not by virtue of any legislation present or future, the responsibility of the Executive and are not required by legislation to be carried out in the full Council.

This includes:

Planning and Development Management

- 1. Power to determine application for planning permission.*
- 2. Power to determine applications to develop land without compliance with conditions previously attached.*
- 3. Power to grant planning permission for development already carried out.*
- 4. Power to decline to determine application for planning permission.*
- 5. Duties relating to the making of determinations of planning applications.*
- 6. Power to determine applications for planning permission made by a local authority, alone or jointly with another person.*
- 7. Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.*
- 8. Power to enter into agreements regulating development or use of land.*
- 9. Power to issue a certificate of existing or proposed lawful use or development.*
- 10. Power to serve a completion notice.*
- 11. Power to grant consent for the display of advertisements.*
- 12. Power to authorise entry onto land.*
- 13. Power to require the discontinuance of a use of land.*
- 14. Power to serve a planning contravention notice, breach of condition notice, stop notice or temporary stop notice Revised April 2023*
- 15. Power to issue an enforcement notice.*
- 16. Power to apply for an injunction restraining a breach of planning control.*
- 17. Power to determine applications for hazardous substances consent, and related powers.*
- 18. Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.*
- 19. Power to require proper maintenance of land.*

20. *Power to determine application for listed building consent, and related powers.*
21. *Duties relating to applications for listed building consent*
22. *Power to serve a building preservation notice, and related powers.*
23. *Power to issue an enforcement notice in relation to demolition of listed building in conservation area.*
24. *Powers to acquire a listed building in need of repair and to serve a repairs notice.*
25. *Power to apply for an injunction in relation to a listed building.*
26. *Power to execute urgent works.*
27. *Powers relating to the protection of important hedgerows.*
28. *Powers relating to the preservation of trees.*
29. *Powers relating to complaints about high hedges.*

Additional Notes and Interpretation – Strategic Planning Committee

1. The Strategic Planning Committee (Major Planning Applications) will generally only deal with full and outline planning applications for Major development proposals as set out in the Scheme of Delegation 2023. All Major Planning Applications are delegated decisions unless the relevant Chair considers otherwise or ward members exercise their right of referral with the Chairs agreement or if significant representations against the Officers recommended decision are received or if the application is a significant Departure from the Development Plan (Local Plan 2019 or any future updates). Any reduction in S106 obligations from Local Plan 2019 (or any future updates) requirements will also be reported to Strategic Planning Committee for determination.

2. Ward Members’ rights to refer planning applications to the District Wide Planning Committee (Minor and Other planning applications) remain unaffected (subject to the Chair’s confirmation that the reasons are valid).

3. Ward members’ rights to refer Planning Applications either to the Strategic Planning Committee (Major Planning Applications) or the District Wide Planning Committee (Minor and Other planning applications) for determination will not, in the normal course of events, extend to discharges of planning conditions or applications under section 96A of the Town and Country Planning Act 1990 (non-material amendments to planning permissions). The reason for this is that the statutory timescales within which decisions relating to these submissions must be made by the LPA are too short to allow for Committee determinations. Officers will continue to notify relevant ward members of such applications through the ‘weekly lists’ and will take into account comments made before making their final decisions.

4. It is good practise to carry out site visits for planning applications. Site visits will be carried out upon planning application at a Committee unless discretion is exercised. The chair in consultation with officers will decide whether to exercise this discretion.

Highways and Transportation

1. *Power to permit deposit of builder’s skip on highway.*
2. *Power to license planting, retention, and maintenance of trees, etc. in part of highway.*
3. *Power to authorise erection of stiles, etc. on footpaths or bridleways.*
4. *Power to license works in relation to buildings, etc. which obstruct the highway.*

5. *Power to consent to temporary deposits or excavations in streets.*
6. *Power to dispense with obligation to erect hoarding or fence.*
7. *Power to restrict the placing of rails, beams, etc. over highways.*
8. *Power to consent to construction of cellars, etc. under street.*
9. *Power to consent to the making of openings into cellars, etc. under streets, and pavement lights, and ventilators.*
10. *Power to create footpath, bridleway or restricted byway by agreement.*
11. *Power to create footpaths, bridleways or restricted byways*
12. *Duty to keep register of information with respect to maps, statements, and declarations.*
13. *Power to stop up footpaths, bridleways or restricted byways*
14. *Power to determine application for public path extinguishment order.*
15. *Power to make a rail crossing extinguishment order.*
16. *Power to make a special extinguishment order.*
17. *Power to divert footpaths, bridleways or restricted byways*
18. *Power to make a public path diversion order.*
19. *Power to make a rail crossing diversion order.*
20. *Power to make a special diversion order.*
21. *Power to require applicant for order to enter into agreement.*
22. *Power to make an SSSI diversion order.*

Revised April 2023

23. *Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980.*
24. *Power to decline to determine certain applications.*
25. *Duty to assert and protect the rights of the public to use and enjoyment of highways.*
26. *Duty to serve notice of proposed action in relation to obstruction.*
27. *Power to apply for variation of order under section 130B of the Highways Act 1980.*
28. *Power to authorise temporary disturbance of surface of footpath, bridleway or restricted byway.*
29. *Power temporarily to divert footpath, bridleway or restricted byway*
30. *Functions relating to the making good of damage and the removal of obstructions.*
31. *Powers relating to the removal of things so deposited on highways as to be a nuisance.*
32. *Power to extinguish certain public rights of way.*
33. *Duty to keep definitive map and statement under review.*
34. *Power to include modifications in other orders.*
35. *Duty to keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and Countryside Act 1981.*
36. *Power to prepare map and statement by way of consolidation of definitive map and statement.*
37. *Power to designate footpath as cycle track.*
38. *Power to extinguish public right of way over land acquired for clearance.*
39. *Power to authorise stopping-up or diversion of highway (including Section 247 of the Town & Country Planning Act 1990).*
40. *Power to authorise stopping-up or diversion of footpath, bridleway or restricted byway*
41. *Power to extinguish public rights of way over land held for planning purposes.*

42. Power to enter into agreements with respect to means of access.

Revised April 2023

43. Power to provide access in absence of agreement.

44. Power to grant a street works licence.

45. Power to grant permission for provision etc of services, amenities, recreation and refreshment facilities on highways and related powers.

46. Duty to publish notice in respect of proposals to grant such permission under Section 115E of the Highways Act 1980.

3.2.2 Proposed District-wide Planning Committee

Below are the details for the proposed District Wide Planning Committee.

The Sub Planning Committees (Heavy Woollen and Huddersfield) will both be deleted in full, from the Terms of Reference. A District Wide Planning Committee (Minor and Other planning applications) will replace the Sub Planning Committees.

The Strategic Planning Committee (Major planning applications) and the District Wide Planning Committee (Minor and Other planning applications) will have equal status, and their terms of reference (as amended) will include responsibilities for planning, highways and transportation matters.

(Appendix B contains the text from the current Terms of Reference with 'tracked changes' to show all proposed amendments. This includes the addition of Highways and Transportation responsibilities identical to those held by the Strategic Planning Committee (Major Planning Applications).

District Wide Planning Committee (Minor and Other planning applications)

Membership will be 9 Members of the Council including the Chairperson.

Terms of Reference

Delegated authority in respect of all Planning, Development Management and Highways functions which are not by virtue of any legislation present or future, the responsibility of the Executive and are not required by legislation to be carried out in the full Council.

This includes:

Planning and Development Management

- 1. Power to determine application for planning permission.*
- 2. Power to determine applications to develop land without compliance with conditions previously attached.*
- 3. Power to grant planning permission for development already carried out.*
- 4. Power to decline to determine application for planning permission.*
- 5. Duties relating to the making of determinations of planning applications.*
- 6. Power to determine applications for planning permission made by a local authority, alone or jointly with another person.*

7. *Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.*
8. *Power to enter into agreements regulating development or use of land.*
9. *Power to issue a certificate of existing or proposed lawful use or development.*
10. *Power to serve a completion notice.*
11. *Power to grant consent for the display of advertisements.*
12. *Power to authorise entry onto land.*
13. *Power to require the discontinuance of a use of land.*
14. *Power to serve a planning contravention notice, breach of condition notice, stop notice or temporary stop notice Revised April 2023*
15. *Power to issue an enforcement notice.*
16. *Power to apply for an injunction restraining a breach of planning control.*
17. *Power to determine applications for hazardous substances consent, and related powers.*
18. *Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.*
19. *Power to require proper maintenance of land.*
20. *Power to determine application for listed building consent, and related powers.*
21. *Duties relating to applications for listed building consent*
22. *Power to serve a building preservation notice, and related powers.*
23. *Power to issue an enforcement notice in relation to demolition of listed building in conservation area.*
24. *Powers to acquire a listed building in need of repair and to serve a repairs notice.*
25. *Power to apply for an injunction in relation to a listed building.*
26. *Power to execute urgent works.*
27. *Powers relating to the protection of important hedgerows.*
28. *Powers relating to the preservation of trees.*

Additional Notes and Interpretation – District Wide Planning Committee

1. *The District Wide Planning Committee (Minor and Other planning applications) will generally only determine Full and Outline planning applications for Minor and Other scale development proposals set out in the Scheme of Delegation 2023.*
2. *All Minor and Other planning applications are delegated decisions unless the relevant Chair considers otherwise or ward members exercise their right of referral with the Chairs agreement or if significant representations against the Officers recommended decision are received or if the application is a significant Departure from the Development Plan (Local Plan 2019 or any future updates).*

Highways and Transportation

1. *Power to permit deposit of builder's skip on highway.*
2. *Power to license planting, retention, and maintenance of trees, etc. in part of highway.*
3. *Power to authorise erection of stiles, etc. on footpaths or bridleways.*
4. *Power to license works in relation to buildings, etc. which obstruct the highway.*
5. *Power to consent to temporary deposits or excavations in streets.*
6. *Power to dispense with obligation to erect hoarding or fence.*
7. *Power to restrict the placing of rails, beams, etc. over highways.*

8. *Power to consent to construction of cellars, etc. under street.*
9. *Power to consent to the making of openings into cellars, etc. under streets, and pavement lights, and ventilators.*
10. *Power to create footpath, bridleway or restricted byway by agreement.*
11. *Power to create footpaths, bridleways or restricted byways*
12. *Duty to keep register of information with respect to maps, statements, and declarations.*
13. *Power to stop up footpaths, bridleways or restricted byways*
14. *Power to determine application for public path extinguishment order.*
15. *Power to make a rail crossing extinguishment order.*
16. *Power to make a special extinguishment order.*
17. *Power to divert footpaths, bridleways or restricted byways*
18. *Power to make a public path diversion order.*
19. *Power to make a rail crossing diversion order.*
20. *Power to make a special diversion order.*
21. *Power to require applicant for order to enter into agreement.*
22. *Power to make an SSSI diversion order.*
- Revised April 2023*
23. *Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980.*
24. *Power to decline to determine certain applications.*
25. *Duty to assert and protect the rights of the public to use and enjoyment of highways.*
26. *Duty to serve notice of proposed action in relation to obstruction.*
27. *Power to apply for variation of order under section 130B of the Highways Act 1980.*
28. *Power to authorise temporary disturbance of surface of footpath, bridleway or restricted byway.*
29. *Power temporarily to divert footpath, bridleway or restricted byway*
30. *Functions relating to the making good of damage and the removal of obstructions.*
31. *Powers relating to the removal of things so deposited on highways as to be a nuisance.*
32. *Power to extinguish certain public rights of way.*
33. *Duty to keep definitive map and statement under review.*
34. *Power to include modifications in other orders.*
35. *Duty to keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and Countryside Act 1981.*
36. *Power to prepare map and statement by way of consolidation of definitive map and statement.*
37. *Power to designate footpath as cycle track.*
38. *Power to extinguish public right of way over land acquired for clearance.*
39. *Power to authorise stopping-up or diversion of highway (including Section 247 of the Town & Country Planning Act 1990).*
40. *Power to authorise stopping-up or diversion of footpath, bridleway or restricted byway*
41. *Power to extinguish public rights of way over land held for planning purposes.*
42. *Power to enter into agreements with respect to means of access.*
- Revised April 2023*
43. *Power to provide access in absence of agreement.*

- 44. Power to grant a street works licence.*
- 45. Power to grant permission for provision etc of services, amenities, recreation and refreshment facilities on highways and related powers.*
- 46. Duty to publish notice in respect of proposals to grant such permission under Section 115E of the Highways Act 1980.*

3.2.3 Other proposed changes to the Constitution and associated Planning Protocols. There are a number of references in the Councils constitution to Sub Committees. As the proposals in the report are to disestablish Sub Committees the relevant parts of the Constitution will require updating. It is recommended that any references to the previous scheme of delegation and Strategic and Sub Committees shall be updated.

The Protocols for the Planning Committees and Sub Committees (including Protocols for Public Speaking) will also require amending to reflect the changes proposed in this report. The relevant pages are appended to this report with track changes highlighting the new and deleted sections.

See Appendix C for proposed changes to Protocols for Planning Committees

4. Implications for the Council

4.1 Working with People

The changes proposed will help save time and money for all parties involved in the planning process. Speeding up planning decision making helps improve outcomes. There are no changes to the roles of the community in the planning process. The 3 main groups of the Council's political parties have helpfully provided input and ideas to shape these reforms.

4.2 Working with Partners

Speeding up the planning process, will help Partners deliver housing and employment developments and make Kirklees a more attractive place to invest and do business. Less throughput of applications in the committee system will help technical and statutory consultees who sometimes prepare for and attend committees.

4.3 Place Based Working

There are no changes to Place based working. The Council will have less requirements on its facilities as a result of having few committee meetings to service and attend.

4.4 Climate Change and Air Quality

Any improvements to the speed and effectiveness of the planning system can help contribute to our goal of Net Zero by 2038 and new developments can help tackle air quality through good quality decision making and designs being approved.

4.5 Improving outcomes for children

Helping speed up the planning process can help provide better quality accommodation for children in terms of housing and education facilities and enhance our existing good parks and recreation spaces.

4.6 Financial Implications for the people living or working in Kirklees

Speeding up the planning process will save a modest amount of money by not having to prepare for and service 3 planning committees. This will allow officers to be redeployed to other case work and projects.

4.7 Other (eg Integrated Impact Assessment (IIA)/Legal/Financial or Human Resources) Consultees and their opinions

An IIA has been undertaken on the planning reforms specified. There is no requirement to complete a stage 2 assessment. Benefits have been identified in speeding up the planning process to parties wanting to undertake new developments.

5. Consultation

The 3 main political groups have been briefed on the planning reforms proposals at their Group meetings. In addition, informal briefings with the Chair of Overview and Scrutiny and the 3 existing Planning Chairs was undertaken. Feedback was helpful in shaping the final recommendations in this report. Cabinet Members, the Leader and the Councils Executive Team have all been engaged throughout the discussions on the options for reform and the recommendations contained within this report.

6. Engagement

Should the reforms be supported and approved by Full Council later this year, communication with regular customers of the planning service and our communities will take place advising on the changes to decision making and when they will come into effect.

7. Next steps and timelines

Transitional arrangements will be implemented following a Full Council decision on the proposed new Scheme of Delegation and the 2 planning committee system. An overview of the next steps and timeline for these arrangements is shown in the table below (with more detail provided in the following paragraphs)

Date	Activity
13 September 23 (Anticipated date)	Report submitted to Full Council
10 November 2023	New Scheme of Delegation 2023 in place
	Revised name and terms of reference in place for Strategic Planning Committee
10 Nov 23 to 9 Feb 2024	Revision to Terms of Reference for existing Sub-Planning Committees (To include reference to new Scheme of Delegation 2023)
9 Feb 2024	Planning Sub-committees disestablished
	New District-wide planning committee established
	Revised Planning Protocol in place (Implementing changes to member referral process)

Currently a working group is evaluating what is required in back-office functions and for the applicants and wider public to implement the reforms. Communication with interested parties will take place throughout Autumn and Winter 2023/4 to inform people about the changes to planning decision making. The aim is to implement the reforms (if approved by Full Council) as quickly as practical post decision of Full Council.

The Scheme of Delegation 2023 will be implemented from 10 November 2023. All planning applications will be decided by the 2023 Scheme of Delegation from this date onwards. Applications which require a decision by one of the current three Planning Committees will be referred to either the Strategic Planning Committee (Major Planning Applications) or one of the appropriate Planning Sub Committees (Heavy Woollen and Huddersfield) until 9 February 2024.

From 9 February 2024 the two Sub Planning Committees will be de-established. The District Wide Planning Committee (Minor and Other Planning Applications) will come into operation from 9 February 2024.

Planning Applications will then be referred to the 2 Committee system (Strategic Planning Committee – Major Planning Applications) and (District Wide Planning Committee- Minor and Other Planning Applications) from 2024 onwards in accordance with the Scheme of Delegation 2023. Both Committees will meet in Huddersfield Town Hall.

Dates for planning committee meetings will be confirmed but it is envisaged they will continue to be held on Thursdays, starting at 1pm with site visits carried out on the same morning before the committee meeting.

8. Officer recommendations and reasons

Officers recommend that the changes to the Scheme of Delegation and the introduction of a 2 planning committee system are taken forward for approval by Full Council and implemented thereafter.

8.1 Specifically, Committee is recommended to approve and recommend Full Council approve the following:

- a) Approve the Scheme of Delegation to the Strategic Director Growth and Regeneration set out at Appendix A to take affect from Friday 10 November 2023.
- b) Approve the Scheme of Delegation to Strategic Director Environment and Climate Change set out at Appendix F to take affect from Friday 10 November 2023
- c) Approve the renaming of Strategic Planning committee as Strategic Planning Committee (Major Planning Applications), and revised Terms of Reference for the Strategic Planning committee set out in Appendix B from Friday 10 November 2023.
- d) To note that the membership and composition of the renamed Strategic Planning Committee remains the same (namely 7 including Chairperson).
- d) Approve a revised Terms of Reference for the existing two planning sub-planning committees (Heavy Woollen and Huddersfield) from Friday 10 November 2023 to Friday 9 February 2024 as set out in Appendix C
- e) Approve the disestablishment both Heavy Woollen Planning Sub-committee and Huddersfield Planning Sub-Committee from Friday 9 February 2024
- f) Approve the establishment a new planning committee and their Terms of Reference at Appendix D - namely the District Wide Planning Committee (Minor & other planning applications). To be implemented on Friday 9 February 2024
- g) Approve the composition of the District Wide Planning Committee (Minor and Other Planning Applications) set out at Appendix B of this report to come into effect from 9 February 2024. Namely:
 - o District Wide Planning Committee - 9 members of the Council including Chairperson (5:3:1)
- h) A delegation to Group Business Managers to nominate membership of the District Wide Planning Committee (Minor and Other Planning Applications) which comes into effect 9 February 2024.
- i) A delegation to the Service Director Legal, Governance and Commissioning to make consequential changes to the Constitution (including Scheme of Delegation at Appendix A and Appendix F, Strategic Planning Committee (Major planning applications) Terms of Reference at Appendix B, and revised Terms of Reference for Heavy Woollen and Huddersfield Planning Sub-Committees at Appendix C) as set out in this report to implement the recommendations to this committee and full Council in relation to this report. To come into effect 10 November 2023.

- j) A delegation to the Service Director Legal, Governance and Commissioning to make consequential changes to the Constitution (including Dis-establishment of the Heavy Woollen and Huddersfield Sub-Planning Committees, establishment of the District-Wide Planning Committee (Minor and Other planning applications) at Appendix A, D and F, and Protocols for Planning Committee at Appendix E) as set out in this report to implement the recommendations to this committee and full Council in relation to this report. To come into effect from 9 February 2024.

8.2 This will save money for all parties involved and enable the focus of Committee and Member time on application which are most important to local communities.

9. Cabinet Portfolio Holder's recommendations

Cllr Graham Turner supports the recommendations.

10. Contact officer

Mathias Franklin – Head of Planning and Development

11. Background Papers and History of Decisions

Existing Scheme of Delegation and Terms of Reference for the Constitution

12. Service Director responsible

Edward Highfield- Service Director for Growth and Regeneration

Appendix A – Changes to Scheme of Delegation (Strategic Director Growth and Regeneration)

Proposed changes shown as tracked changes (in coloured text) below:

Scheme of Delegation 2023

Strategic Director Growth and Regeneration

The holder of the post of Strategic Director Growth and Regeneration shall be responsible for the strategic direction and overall management and delivery of the functions and responsibilities of the Growth and Regeneration Directorate and, without prejudice to the foregoing, shall have power to discharge the following functions and responsibilities, subject to compliance with the Constitution, FPRs, CPRs, approved policies of the Council or the Executive (as appropriate) and all legal requirements:

Investment and Regeneration

A. Development Management, Strategic and Neighbourhood Planning and Highways Transportation

Non-Executive Functions

1. All functions and responsibilities of the Council as:

- Local Planning Authority (within the meaning of Section 1(2) Town and Country Planning Act 1990, Section 81 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and Regulation 2 of the Hedgerow Regulations 1997);
- Mineral Planning Authority (within the meaning of Section 1(4) of the Town and Country Planning Act 1990);
- Relevant Authority (within the meaning of the Part 8 of the Anti-Social Behaviour Act 2003);
- Hazardous Substances Authority (within the meaning of Section 1 of the Hazardous Substances Act 1990);
- Local Housing Authority (within the meaning of Section 1 of the Housing Act 1985);
- Acquiring Authority (within the meaning of section 7(1) of the Acquisition of Land Act 1981)

relating to development management, strategic and neighbourhood planning, high hedges and hazardous substances included within the terms of reference of the Strategic Planning Committee (Major Applications) and District Wide Planning Committee (Minor and Other Applications) except:

- (1) For any Major Planning Application (Full or Outline) which receives a significant number of representations against the officers recommended decision or if a Ward Members refers a Major Planning Application to Strategic Planning Committee with the Chairs agreement or if a significant Departure from the development Plan (Local Plan 2019 or any future updates) or any reduction in S106 Planning obligations from Local Plan 2019 (or any future updates).
- (2) Any Minor or Other Planning applications which receives a significant number of representations against the officers recommended decision or if a Ward Members refers a Minor or Other Planning Application to the district Wide Planning Committee

(Minor and Other applications) with the Chairs agreement or if a significant Departure from the Development Plan (Local Plan 2019 or any future updates).

(1) The determination of planning applications for full or outline planning permission which are specifically reserved to the Strategic Planning Committee, namely:

a) Planning applications where the proposed decision will be contrary to any saved policy of the Unitary Development Plan save for;

i) Planning applications involving the development of no more than 60 residential units where the proposed decision will only be contrary to saved Policy D5.

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b) Planning applications that straddle administrative boundaries¹

;

c) Planning applications that straddle Planning Area Sub-Committee boundaries²

;

d) Planning applications for residential developments exceeding 60 units;

e) Non-residential planning applications (including employment, leisure and education development) where the application site boundary exceeds 0.5 hectares³

;

f) Planning applications for wind turbines which involve the generation of more than 1MW collectively;

g) Other energy production planning applications exceeding 5MW or where the application site boundary exceeds 1 hectare;

h) Planning applications for major infrastructure proposals;

i) Planning applications for new minerals sites or physical extensions to existing minerals workings where the area to be developed exceeds 0.5 hectares;

j) Planning applications for retail developments exceeding 1250 square metres gross in floor space which officers are proposing to approve;

k) Planning applications for gypsy/traveller sites;

l) Any other planning applications that are considered appropriate for referral to the Strategic Planning Committee by the Strategic Director Growth and Regeneration in consultation with the Chair of the relevant Area Sub-Committee e.g. planning applications for residential development which will significantly increase the size of an individual settlement;

m) Planning applications for exploration, appraisal and production of oil and gas resources by fracking;

n) Planning applications for the disposal of special hazardous wastes where the application site boundary exceeds 0.5 hectares;

o) Planning application for mixed-use developments that include more

¹ Unless the Strategic Director Growth and Regeneration in consultation with the Chair of the

Strategic Planning Committee determines that it would be more appropriate for the planning application to be decided by the relevant Area Sub-Committee

2-Unless the Strategic Director Growth and Infrastructure in consultation with the Chair of the Strategic Planning Committee determines that it would be more appropriate for the planning application to be decided by the relevant Area Sub-Committee

3-As above

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than 50 residential units and employment, leisure and/or nonresidential development where the application site boundary exceeds 0.5 hectares;

p) Matters that fall to be considered by the relevant Planning Area SubCommittee as specified in paragraph 3 of the General Provisions and in the following cases:

i) planning applications for residential development where the area to be developed is in exceeds 0.5 hectares but propose fewer than 61 units;

ii) planning applications for retail development in excess of 750 sq metres gross floor area which officers are proposing to approve;

iii) if the delegated officer so decides:

a) with the agreement of the Chair of the relevant SubCommittee; or

b) due to the significant volume of local opinion;

iv) where any ward member so requests in relation to any planning application or submission⁴ within their ward and the Chair of the relevant Sub-Committee has confirmed that the ward member's reasons for making the request are valid having regard to the requirements of the Councillors' Protocol for Planning Committees and Sub-Committees; and

v) where any member for the wards of Almondbury, Ashbrow, Colne Valley, Crosland Moor and Netherton, Dalton, Denby Dale, Golcar, Greenhead, Holme Valley North, Holme Valley South, Kirkburton, Lindley and Newsome so requests with regard to any application/submission⁵

for development falling wholly or substantially within Huddersfield Town Centre and the Chair of the relevant sub-committee has confirmed that the ward member's reasons for making the request are valid having regard to the Councillor's Protocol for Planning Committees and Sub-Committees and that the application / submission does relate to development falling wholly or substantially within Huddersfield Town Centre.

(Ward members are required to specify in writing their reasons

4,5

"Submission" means:

- ▲ applications for approval of reserved matters relating to extant outline planning permissions that were not determined by the Strategic Planning Committee
 - ▲ applications under s73 TCPA 1990 relating to extant permissions that were not determined by the Strategic Planning Committee
- Revised February 2022
- for making the request which shall reasonably relate to some aspect of the site or the development. The reason will be incorporated in full in the Sub-Committee report)
- vi) applications for listed building consent involving the partial or total demolition of Grade I or Grade II* listed buildings;
 - vii) the serving of building preservation notices under Section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in non-urgent cases;
 - viii) planning applications for the disposal of special hazardous wastes on sites up to and including 0.5 hectares;
 - ix) applications to court for an injunction to restrain:-
 - a) any actual or apprehended breach of planning control;
 - b) any actual or apprehended offence under the Hedgerow Regulations 1997;
 - c) any actual or apprehended offence under Sections 210 or 211 of the Town and Country Planning Act 1990;
 - d) any actual or apprehended contravention of Section 9(1) or (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990;
 in non-urgent cases where action does not need to be instigated in advance of the next scheduled Sub-Committee.
 - x) 3) applications for the stopping up and diversion of footpaths, bridleways and restricted byways under Section 257 of the Town and Country Planning Act 1990 where:
 - a) any member so requests in relation to an application within their ward. The member shall specify in writing his/her reasons for making the request; or
 - b) there is no majority support for the proposed action by the three ward members (and for the purposes of this paragraph, the non-response of any ward member shall not be treated as opposition to any proposal).
 - xi) the revocation of certificates of lawfulness of existing use or development and certificates of lawfulness of proposed use or development;
- Revised February 2022
- xii) all applications submitted by or on behalf of any elected member of the Council (in their personal capacity) or any member of their family;
 - xiii) all applications submitted by or on behalf of any member of staff (in their personal capacity) who works for the Investment and Regeneration Service and any member of their family;
 - xiv) all applications submitted by or on behalf of the Chief Executive, any member of the Directors Group or Management

Board or any Head of Service or Senior Manager (in their personal capacity) or any member of their family.

q) The determination of all submissions⁶

(relating to extant outline or

full planning permissions that were originally considered by the Strategic Planning Committee) where the following circumstances apply:

i) if the delegated officer so decides:

a) with the agreement of the Chair of the Strategic Planning Committee; or

b) due to the significant volume of local opinion

ii) where any ward member so requests in relation to any submission within their ward and the Chair of the Strategic Planning Committee has confirmed that the ward member's reasons for making the request are valid having regard to the requirements of the Councillors' Protocol for Planning Committees and Sub-Committees;

Without prejudice to the generality of the above, but subject to the specific exceptions set out in (1), (2) and (3) above, such functions and responsibilities referred to in A1 above include but are not limited to:

(a) Determination of applications under section 73 of the Town and Country Planning Act 1990;

(b) Determination of applications under section 96A of the Town and Country Planning Act 1990;

(c) Determination of the applications/submissions to discharge planning conditions on all planning permissions and reserved matters approvals;

(d) Determination of all applications for the approval of reserved matters;

6

"submission" means applications for approval of reserved matters and applications under s73-TCPA

1990

Revised February 2022

(e) Determination of planning applications to modify elements of approved developments that benefit from extant planning permissions (e.g. modified house types, minor layout changes).

Executive Functions

2. All relevant functions and responsibilities of the Council as:

▲ Local Planning Authority (within the meaning of Section 1(2) Town and Country Planning Act 1990, Section 81 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 2 of the Hedgerow Regulations 1997);

▲ Mineral Planning Authority (within the meaning of Section 1(4) of the Town and Country Planning Act 1990);

▲ Relevant Authority (within the meaning of Part 8 of the Anti-Social Behaviour Act 2003);

▲ Hazardous Substances Authority (within the meaning of Section 1 of the Hazardous Substances Act 1990).

▲ Local Housing Authority (within the meaning of Section 1 of the Housing Act 1985);

▲ Acquiring Authority (within the meaning of section 7(1) of the Acquisition of Land Act 1981) relating to development management, strategic and neighbourhood planning, high hedges and hazardous substances not included within the terms of reference of the Strategic Planning Committee, and not by virtue of any legislation present or future prevented from being the responsibility of the Executive or required by legislation to be carried out by full Council, together with any local choice functions set out within Section A of this Part that have been allocated to the Executive subject to the exceptions that:

Matters are referred to the Executive in the following cases:

(i) As specified in paragraph 3 of the General Provisions above.

Without prejudice to the generality of the above such functions and responsibilities referred to in A2 above include but are not limited to:

a) To prepare and publish for consultation the Local Transport Plan.

In relation to Part 6 Chapter 3 and Schedule 9, 10, 11, 12 of the Localism Act 2011 to:

a) Advice and assistance to applicants;

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b) Recommendations to the Neighbourhoods Committee as to the designation of forums and areas;

c) Receive and respond to the consultation;

d) Check compliance with procedures, all relevant legislation and conformity with plans;

e) Undertaking publicity;

f) Determining content of representation at examination.

Appendix B – Changes to Strategic Planning Committee Terms of Reference

Proposed changes shown as tracked changes (in green text) below:

Strategic Planning Committee (Major Planning Applications)

Membership

7 Members of the Council Including the Chairperson (3:2:1)-(4:2:1)

Terms of Reference

Delegated authority in respect of all Planning, Development Management and Highways functions which are not by virtue of any legislation present or future, the responsibility of the Executive and are not required by legislation to be carried out in the full Council.

This includes:

Planning and Development Management

1. Power to determine application for planning permission.
2. Power to determine applications to develop land without compliance with conditions previously attached.
3. Power to grant planning permission for development already carried out.
4. Power to decline to determine application for planning permission.
5. Duties relating to the making of determinations of planning applications.
6. Power to determine applications for planning permission made by a local authority, alone or jointly with another person.
7. Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.
8. Power to enter into agreements regulating development or use of land.
9. Power to issue a certificate of existing or proposed lawful use or development.
10. Power to serve a completion notice.
11. Power to grant consent for the display of advertisements.
12. Power to authorise entry onto land.
13. Power to require the discontinuance of a use of land.
14. Power to serve a planning contravention notice, breach of condition notice, stop notice or temporary stop notice Revised April 2023
15. Power to issue an enforcement notice.
16. Power to apply for an injunction restraining a breach of planning control.
17. Power to determine applications for hazardous substances consent, and related powers.
18. Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.
19. Power to require proper maintenance of land.
20. Power to determine application for listed building consent, and related powers.
21. Duties relating to application for listed building consent
22. Power to serve a building preservation notice, and related powers.
23. Power to issue an enforcement notice in relation to demolition of listed building in conservation area.
24. Powers to acquire a listed building in need of repair and to serve a repairs notice.
25. Power to apply for an injunction in relation to a listed building.
26. Power to execute urgent works.
27. Powers relating to the protection of important hedgerows.

28. Powers relating to the preservation of trees.
29. Powers relating to complaints about high hedges.

Additional Notes and Interpretation – Strategic Planning Committee

1. The Strategic Planning Committee (Major Planning Applications) will generally only deal with full and outline planning applications for Major development proposals ~~falling within the 16 categories of development specifically reserved to that Committee as set out in the Scheme of Delegation 2023. All Major Planning Applications are delegated decisions Applications for approval of reserved matters and variations of conditions will be determined by officers unless~~ the relevant Chair considers otherwise or ward members exercise their right of referral with the Chairs agreement or if significant representations against the Officers recommended decision are received or if the application is a significant Departure from the Development Plan (Local Plan 2019 or any future updates). Any reduction in S106 obligations from Local Plan 2019 (or any future updates) requirements will also be reported to Strategic Planning Committee for determination.

~~2. All planning applications that straddle administrative boundaries or Area SubCommittee boundaries will be determined by the Strategic Planning Committee except where the Strategic Director for the Economy and Infrastructure in consultation with the Chair of that Committee considered that it would be more Revised April 2023 appropriate for such applications to be decided by the relevant Area SubCommittee.~~

3. Ward Members' rights to refer planning applications/submissions to the District Wide relevant Area Planning Sub-Committee (Minor and Other planning applications) remain unaffected (subject to the Chair's confirmation that the reasons are -valid). ~~A right for ward members to refer applications/submissions relating to permissions that were originally determined by the Strategic Planning Committee to that committee for determination is also available.~~

4. Ward members' rights to refer Planning Applications submissions either to the Strategic Planning Committee (Major Planning Applications) or the Area District Wide Planning Sub-Committee (Minor and Other planning applications) for determination will not, in the normal course of events, extend to discharges of planning conditions or applications under section 96A of the Town and Country Planning Act 1990 (non-material amendments to planning permissions). The reason for this is that the statutory timescales within which decisions relating to these submissions must be made by the LPA are too short to allow for Committee/Sub-Committee determinations. Officers will continue to notify relevant ward members of such submissions-applications through the 'weekly lists' and will take into account comments made before making their final decisions.

5. It is good practise to carry out site visits for planning applications. Site visits will be carried out upon ~~major~~ planning application at a Committee unless discretion is exercised. The chair in consultation with officers will decide whether to exercise this discretion.

Highways and Transportation

1. Power to permit deposit of builder's skip on highway.
2. Power to license planting, retention, and maintenance of trees, etc. in part of highway.
3. Power to authorise erection of stiles, etc. on footpaths or bridleways.
4. Power to license works in relation to buildings, etc. which obstruct the highway.
5. Power to consent to temporary deposits or excavations in streets.
6. Power to dispense with obligation to erect hoarding or fence.
7. Power to restrict the placing of rails, beams, etc. over highways.
8. Power to consent to construction of cellars, etc. under street.
9. Power to consent to the making of openings into cellars, etc. under streets, and pavement lights, and ventilators.
10. Power to create footpath, [bridleway](#) or restricted byway by agreement.
11. Power to create footpaths, [bridleways](#) or restricted byways
12. Duty to keep register of information with respect to maps, statements, and declarations.
13. Power to stop up footpaths, [bridleways](#) or restricted byways
14. Power to determine application for public path extinguishment order.
15. Power to make a rail crossing extinguishment order.
16. Power to make a special extinguishment order.
17. Power to divert footpaths, [bridleways](#) or restricted byways
18. Power to make a public path diversion order.
19. Power to make a rail crossing diversion order.
20. Power to make a special diversion order.
21. Power to require applicant for order to enter into agreement.
22. Power to make an SSSI diversion order.

Revised April 2023

23. Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980.
24. Power to decline to determine certain applications.
25. Duty to assert and protect the rights of the public to use and enjoyment of highways.
26. Duty to serve notice of proposed action in relation to obstruction.
27. Power to apply for variation of order under section 130B of the Highways Act 1980.
28. Power to authorise temporary disturbance of surface of footpath, bridleway or restricted byway.
29. Power temporarily to divert footpath, [bridleway](#) or restricted byway
30. Functions relating to the making good of damage and the removal of obstructions.
31. Powers relating to the removal of things so deposited on highways as to be a nuisance.
32. Power to extinguish certain public rights of way.
33. Duty to keep definitive map and statement under review.
34. Power to include modifications in other orders.
35. Duty to keep register of prescribed information with respect to applications

under section 53(5) of the Wildlife and Countryside Act 1981.

36. Power to prepare map and statement by way of consolidation of definitive map and statement.

37. Power to designate footpath as cycle track.

38. Power to extinguish public right of way over land acquired for clearance.

39. Power to authorise stopping-up or diversion of highway (including Section 247 of the Town & Country Planning Act 1990).

40. Power to authorise stopping-up or diversion of footpath, bridleway or restricted byway

41. Power to extinguish public rights of way over land held for planning purposes.

42. Power to enter into agreements with respect to means of access.

Revised April 2023

43. Power to provide access in absence of agreement.

44. Power to grant a street works licence.

45. Power to grant permission for provision etc of services, amenities, recreation and refreshment facilities on highways and related powers.

46. Duty to publish notice in respect of proposals to grant such permission under Section 115E of the Highways Act 1980.

Appendix C – Changes to Planning Sub- Committees Terms of Reference – for the period 10 November 2023 to 9 Feb 2024

Proposed changes shown as tracked changes below:

Planning (Heavy Woollen) Area Sub Committee Planning (Huddersfield) Area Sub Committee (Sub-committees of the Strategic Planning Committee)

Membership

15 Members of the Council

Terms of Reference

Delegated authority in respect of all Planning, Development Management and Highways functions which are not by virtue of any legislation present or future, the responsibility of the Executive and are not required by legislation to be carried out in the full Council.

This includes:

Planning and Development Management

1. Power to determine application for planning permission.
2. Power to determine applications to develop land without compliance with conditions previously attached.
3. Power to grant planning permission for development already carried out.
4. Power to decline to determine application for planning permission.
5. Duties relating to the making of determinations of planning applications.
6. Power to determine applications for planning permission made by a local authority, alone or jointly with another person.
7. Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.
8. Power to enter into agreements regulating development or use of land.
9. Power to issue a certificate of existing or proposed lawful use or development.
10. Power to serve a completion notice.
11. Power to grant consent for the display of advertisements.
12. Power to authorise entry onto land.
13. Power to require the discontinuance of a use of land.
14. Power to serve a planning contravention notice, breach of condition notice, stop notice or temporary stop notice Revised April 2023
15. Power to issue an enforcement notice.
16. Power to apply for an injunction restraining a breach of planning control.
17. Power to determine applications for hazardous substances consent, and related powers.
18. Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.
19. Power to require proper maintenance of land.
20. Power to determine application for listed building consent, and related powers.
21. Duties relating to applications for listed building consent

22. Power to serve a building preservation notice, and related powers.
23. Power to issue an enforcement notice in relation to demolition of listed building in conservation area.
24. Powers to acquire a listed building in need of repair and to serve a repairs notice.
25. Power to apply for an injunction in relation to a listed building.
26. Power to execute urgent works.
27. Powers relating to the protection of important hedgerows.
28. Powers relating to the preservation of trees.

Additional Notes and Interpretation – District Wide Planning Committee

1. The Planning Sub-Committees (Heavy Woollen and Huddersfield) will generally only determine Full and Outline planning applications for Minor and Other scale development proposals set out in the Scheme of Delegation 2023.
 2. All Minor and Other planning applications are delegated decisions unless the relevant Chair considers otherwise or ward members exercise their right of referral with the Chairs agreement or if significant representations against the Officers recommended decision are received or if the application is a significant Departure from the Development Plan (Local Plan 2019 or any future updates).
-
- 2 Those matters that fall within the scheme of delegation of the Strategic Director for Economy and Infrastructure.

Appendix D – New District-Wide Planning Committee Terms of Reference

Proposed changes shown as tracked changes (coloured text) below:

District Wide Planning Committee (Minor and Other **planning** applications)

Membership

9 Members of the Council including the Chairperson. (5:3:1)

Terms of Reference

Delegated authority in respect of all Planning, Development Management and Highways functions which are not by virtue of any legislation present or future, the responsibility of the Executive and are not required by legislation to be carried out in the full Council.

This includes:

Planning and Development Management

1. Power to determine application for planning permission.
2. Power to determine applications to develop land without compliance with conditions previously attached.
3. Power to grant planning permission for development already carried out.
4. Power to decline to determine application for planning permission.
5. Duties relating to the making of determinations of planning applications.
6. Power to determine applications for planning permission made by a local authority, alone or jointly with another person.
7. Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.
8. Power to enter into agreements regulating development or use of land.
9. Power to issue a certificate of existing or proposed lawful use or development.
10. Power to serve a completion notice.
11. Power to grant consent for the display of advertisements.
12. Power to authorise entry onto land.
13. Power to require the discontinuance of a use of land.
14. Power to serve a planning contravention notice, breach of condition notice, stop notice or temporary stop notice Revised April 2023
15. Power to issue an enforcement notice.
16. Power to apply for an injunction restraining a breach of planning control.
17. Power to determine applications for hazardous substances consent, and related powers.
18. Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.
19. Power to require proper maintenance of land.
20. Power to determine application for listed building consent, and related powers.
21. Duties relating to applications for listed building consent
22. Power to serve a building preservation notice, and related powers.
23. Power to issue an enforcement notice in relation to demolition of listed building in conservation area.
24. Powers to acquire a listed building in need of repair and to serve a repairs notice.
25. Power to apply for an injunction in relation to a listed building.
26. Power to execute urgent works.

27. Powers relating to the protection of important hedgerows.

28. Powers relating to the preservation of trees.

Additional Notes and Interpretation – District Wide Planning Committee

1. The District Wide Planning Committee (Minor and Other applications) will generally only determine Full and Outline planning applications for Minor and Other scale development proposals set out in the Scheme of Delegation 2023.
2. All Minor and Other planning applications are delegated decisions unless the relevant Chair considers otherwise or ward members exercise their right of referral with the Chairs agreement or if significant representations against the Officers recommended decision are received or if the application is a significant Departure from the Development Plan (Local Plan 2019 or any future updates).

Highways and Transportation

1. Power to permit deposit of builder's skip on highway.
2. Power to license planting, retention, and maintenance of trees, etc. in part of highway.
3. Power to authorise erection of stiles, etc. on footpaths or bridleways.
4. Power to license works in relation to buildings, etc. which obstruct the highway.
5. Power to consent to temporary deposits or excavations in streets.
6. Power to dispense with obligation to erect hoarding or fence.
7. Power to restrict the placing of rails, beams, etc. over highways.
8. Power to consent to construction of cellars, etc. under street.
9. Power to consent to the making of openings into cellars, etc. under streets, and pavement lights, and ventilators.
10. Power to create footpath, bridleway or restricted byway by agreement.
11. Power to create footpaths, bridleways or restricted byways
12. Duty to keep register of information with respect to maps, statements, and declarations.
13. Power to stop up footpaths, bridleways or restricted byways
14. Power to determine application for public path extinguishment order.
15. Power to make a rail crossing extinguishment order.
16. Power to make a special extinguishment order.
17. Power to divert footpaths, bridleways or restricted byways
18. Power to make a public path diversion order.
19. Power to make a rail crossing diversion order.
20. Power to make a special diversion order.
21. Power to require applicant for order to enter into agreement.
22. Power to make an SSSI diversion order.
- Revised April 2023
23. Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980.
24. Power to decline to determine certain applications.
25. Duty to assert and protect the rights of the public to use and enjoyment of highways.

26. Duty to serve notice of proposed action in relation to obstruction.
27. Power to apply for variation of order under section 130B of the Highways Act 1980.
28. Power to authorise temporary disturbance of surface of footpath, bridleway or restricted byway.
29. Power temporarily to divert footpath, bridleway or restricted byway
30. Functions relating to the making good of damage and the removal of obstructions.
31. Powers relating to the removal of things so deposited on highways as to be a nuisance.
32. Power to extinguish certain public rights of way.
33. Duty to keep definitive map and statement under review.
34. Power to include modifications in other orders.
35. Duty to keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and Countryside Act 1981.
36. Power to prepare map and statement by way of consolidation of definitive map and statement.
37. Power to designate footpath as cycle track.
38. Power to extinguish public right of way over land acquired for clearance.
39. Power to authorise stopping-up or diversion of highway (including Section 247 of the Town & Country Planning Act 1990).
40. Power to authorise stopping-up or diversion of footpath, bridleway or restricted byway
41. Power to extinguish public rights of way over land held for planning purposes.
42. Power to enter into agreements with respect to means of access.
- Revised April 2023
43. Power to provide access in absence of agreement.
44. Power to grant a street works licence.
45. Power to grant permission for provision etc of services, amenities, recreation and refreshment facilities on highways and related powers.
46. Duty to publish notice in respect of proposals to grant such permission under Section 115E of the Highways Act 1980.

KIRKLEES COUNCIL

PROTOCOL FOR PLANNING COMMITTEES

(Approved by Julie Muscroft under the general delegation of - date to be added post Full Council Autumn 2023)

1. BACKGROUND AND INTRODUCTION

This protocol replaces and updates Which was approved 20 May 2015.

1. The aim of this protocol is to ensure that the planning process operates properly, legally and effectively and that there are no grounds for suggesting that a decision has been biased, partial or not properly considered and made in any way. It is also intended to help councillors work effectively and seek to achieve their aims within the regimes which govern development control.
2. Your role as a member of the planning authority is to make planning decisions openly, impartially, with sound judgment and for justifiable, properly balanced reasons which must be relevant to planning issues. If for any reason you would have difficulty in complying with this protocol or if you would usually prefer to be able to champion your constituents' point of view, you should not accept appointment to the committees , nor attend as a substitute.
3. When the protocol applies: This protocol applies to councillors at all times when involved in the planning process. This includes taking part in decision making meetings of a planning committee or sub-committee, or when involved on less formal occasions, such as meetings with officers or the public. It applies equally to planning enforcement matters or to policy issues relating to a specific site as to planning applications. Part 11 of the protocol draws attention to issues affecting all councillors, whether or not involved in decision- making.
4. If you have any doubts about the application of this protocol to your own circumstances, you should seek early advice from the Service Director – Legal, Governance and Commissioning or one of their staff, preferably well before any meeting takes place. Senior Planning Officers and Decision Support Officers are also able to assist.

2. RELATIONSHIP TO THE COUNCILLORS' CODE OF CONDUCT

5. This protocol is additional to the councillors' code of conduct. You should always apply that code first to any issue arising and declare any interests which you may have and, in the case of an Other interest, leave the meeting during the consideration of the item (unless you have been allowed to stay to make a statement as permitted by the revised code of conduct, in which case you should leave as soon as you have made that statement). As with all other matters, the duty to declare an interest also applies where it is a member of your family, a close associate of yours or your employer etc, who has an interest as defined in the code of conduct. It would be helpful if you could avoid confusing that sort of interest with the other issues raised under this protocol, especially those in part 3 below.

3. GUIDANCE REGARDING ISSUES OF BIAS, PREDETERMINATION AND PREDISPOSITION

6. Planning is not a quasi-judicial process. It is an administrative decision making process. Councillors who sit on planning committees cannot therefore be expected to have the same strict level of independence and impartiality as judges or quasi-judges who make decisions in courts and tribunals.
7. Councillors are elected to provide and pursue policies in a situation of democratic accountability. Accordingly, members of planning committees are entitled and indeed expected, by those who have elected them, to have and express views on planning issues. They will have political allegiances and publicly known policies.
8. It is therefore perfectly permissible for members of a planning committee to be predisposed towards a view that is in favour of or against a planning application or development proposal. However, it is essential that, notwithstanding their predisposition, they retain an open mind as to the merits of the argument before they make the final decision. Failure to do so, or failure to demonstrate to applicants, objectors or other interested parties that they have done so, can result in allegations of bias and/or predetermination which can lead to the validity of the decision being called into question. It is for this reason that councillors' minds must not be closed to the merits of any planning application or decision or even appear to be closed ie by giving a clear impression that they have already decided how they will vote at the meeting and that nothing will change their minds.

Example of predisposition

- I am very concerned about the impact of this proposal on the local highway network. It already takes 25 minutes to get through the crossroads at peak

times. I want to see convincing evidence from the applicant that this proposal will not make matters even worse.

- This proposal is in Green Belt and the proposed extension would be inappropriate development. Its design doesn't seem to be particularly sympathetic to its surroundings. In such a prominent location there is real potential for such a development to have a very damaging effect on the open character of the area. Green Belt development needs to be handled particularly sensitively. Therefore, unless the applicant can convince me that this would be an appropriate development in the Green Belt or there are very special circumstances why it should be approved then I can't currently see how I will be able to support this application. The applicant needs to make a stronger case and provide more information.

Example of predetermination

- This proposal is a disaster waiting to happen. Under no circumstances could I ever support approval of this application. The applicant needs to go back to the drawing board and have a complete rethink or, ideally, he should do us all a favour and abandon this completely.
9. Also, councillors cannot be seen to take part in any planning decision making processes where they have or may appear to have a vested interest in the outcome for eg if they have a Disclosable Pecuniary Interest (DPI) and/or an Other interest in a planning application. Taking part in these circumstances can lead to allegations of bias and the validity of the decision again being called into question. If councillors are shown to have been motivated by bias then, ultimately, the decision may be ruled by the courts as unlawful and quashed.
 10. The basic legal position is that councillors may not be party to decisions in relation to which they are either actually biased (in the sense that they have a closed mind and have predetermined the outcome of the matter irrespective of the merits of any representations or arguments that may be put to them) or give an appearance of being biased.

The test that would be applied by the courts regarding apparent bias is:

Would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?

(NB. An informed observer should be taken to be someone who understands the democratic context and realities of working in a political environment)

11. In order to guard against allegations of bias and/or predetermination members of planning committees are therefore advised to follow the guidance set out below:

(1) Members with Disclosable Pecuniary Interests (DPI) and Other interests

1. At planning committee and sub-committee meetings, ensure that you always declare relevant interests in accordance with the Members' Code of Conduct.
2. Remember that:
 1. direct financial interest in the outcome of a planning decision will automatically lead to an appearance of bias;
 2. family relationship or close friendship between a member of a planning committee and the beneficiary of the decision may, and usually will, give rise to an appearance of bias;
 3. mere membership of a particular charity or group will not normally give rise to an appearance of bias on the part of the decision maker.

(2) Predetermination/predisposition

3. It is lawful for members of planning committees and sub-committees to have, and to have expressed, views on controversial local matters (such matters may often have been raised as election issues).
4. Members of planning committees are entitled to be predisposed to certain views.
5. Members must at all times retain an open mind (ie in making decisions they must consider all relevant matters and approach their task with no preconceptions) right up to the point of making the decision . But they are entitled to have regard to and apply policies in which they believe, particularly if those policies have been part of their political manifestos.
6. Members must be trusted to abide by the rules which the law lays down ie that, whatever their views, they must approach their decision making with an open mind and be prepared to change their views if persuaded that they should do so.
7. Evidence of political affiliation or of the adoption of policies towards a planning proposal will not by itself amount to an appearance of predetermination or bias.
8. Unanimity of approach by all members of a single political group when voting on a planning application should not necessarily lead to a conclusion that all or any of those members had a closed mind. Members will obviously attach importance, to differing degrees, to group unity and conformity with group policy. This is perfectly

acceptable provided they understand that the ultimate decision is for them alone as individuals.

9. Leading members of the authority who have participated in the development of planning policies and proposals need not and should not normally exclude themselves from decision making meetings solely on the ground that they were involved in the decision of the Executive to promote or approve the policy or proposal.
12. The guidance above has been prepared having regard to the current law on bias and predetermination. The contents of this note demonstrate that members responsible for making planning decisions do have considerable freedom to express views on applications and, in formulating such a view or predisposition, to be influenced by a number of factors including the policies of their political group and issues that they supported during an election campaign. However, members must at all times retain an open mind as to the merits of an application or proposal and demonstrate that they are willing (right up to the point of the decision) to take into account all material planning considerations.
13. Members who speak vociferously for or against a proposal thereby giving the impression that they have unequivocally and irrevocably made up their mind prior to the planning meeting may, therefore, find it more difficult to demonstrate that they have indeed retained an open mind. In these circumstances such members may consider that it would be prudent to step down from the committee and to speak at the meeting as ward councillor. Members can seek advice from the Service Director – Legal, Governance and Commissioning regarding this matter or any of the issues raised above.

4. LOBBYING AND CONTACT WITH APPLICANTS AND OBJECTORS

14. Any councillor could be the subject of lobbying over planning issues. Lobbying occurs when an applicant, objector or supporter seeks to influence a councillor to change their mind or to adopt and support their point of view. This includes contact by letter, e-mail, 'phone or in person to discuss or put forward specific points of view regarding forthcoming planning decisions.
15. Lobbying is a normal and perfectly proper part of the political process. However, you need to understand and accept that where you are making a decision on a planning issue, you are acting in a different role from that of ward councillor. Lobbying can, therefore, unless care and common sense are exercised by all concerned, lead to your impartiality and integrity being called into question. In order to avoid any such criticism or legal challenge and to preserve your right to vote on an application, you should follow the following advice.

1. Avoid organising support for or opposition to a planning application or involving yourself in such a process and avoid lobbying other councillors on the issue.
2. If applicants, potential applicants or objectors ask to meet you about a proposal ideally you should refer them to another councillor who does not serve on the planning sub-committee and will not be involved in the decision; alternatively refer them to an officer. If however, the proposal is complex, controversial or of major local significance, eg a new supermarket, landfill site, large housing estate, then you may consider that the process would benefit from engaging councillors in pre-application/determination discussions. In such a situation it will be important for you to follow the guidance set out in section 5 of this Protocol about pre-application/determination discussions.
3. If anyone (including another councillor) does lobby you or raise issues about a particular proposal, refer them to officers for advice on procedure and suggest that they send their comments to officers so that they can be included in the committee report; it is also a good idea to explain why, even though you are more than happy to listen to their views/concerns, you have to remain completely impartial until the final decision has been made.
4. Keep a record of any approaches by lobbyists and the response given or action taken; these records should be incorporated in the form attached as an appendix to this protocol and the relevant records produced at the start of each sub-committee meeting - but note that this is a separate process from that which relates to declaration of interests under the members' code of conduct.
5. Minimise social contacts with known developers and agents and refrain altogether from such contacts when pre-application work is under way or a planning application has been received and is being considered by the authority;

When approached by anybody (including the press) regarding a particular application, take care to avoid expressing an opinion which others might regard as clearly indicating that you have already made up your mind on the issue before hearing all the information and arguments presented at the subcommittee meeting. You can, if pressed, perhaps, indicate the sort of concerns or issues which you think you'll need to consider when making the decision, but remember that if you cannot clearly demonstrate that at the meeting you have an open mind and are balancing all the various issues and arguments, you run the risk of potentially invalidating the decision and making the Council subject to legal challenge. So make sure that you also say that you will not be making a final decision until the meeting.

6. If you cannot avoid expressing an unequivocal opinion on the decision beforehand, which could be construed by others as

clearly indicating that you have a closed mind as to the merits of the application, then you should disclose this at the committee (as part of the disclosure of lobbying). You should not then vote on the item unless you made it clear when expressing the opinion that your views were preliminary only and that a final decision would be made at the sub-committee meeting when you had the opportunity to review all the issues and arguments. If you do have to drop out of a particular decision, you should not take part in the discussion on the item, but may, if you wish to speak, move away from the other members of the committee to the public area and comment when invited to do so as with other non-committee members and the public.

7. Remember that your overriding duty in this role is to the whole community not just to the people in your ward and, taking into account the need to make decisions impartially, you should not improperly favour any person, company, group or locality or appear to do so. If local people put you under pressure, or you want to try to be as helpful as possible, try to explain the reasons why you can't favour one side or the other, tell them the best way to get their views across, tell them how to contact another councillor who can be more proactive in supporting/helping them, or refer them to officers who can explain the issues and reasons.

Public Meetings are unlikely to be necessary or appropriate in most cases, since the process was adopted of allowing applicants and objectors to attend and make comments at planning sub-committee meetings. Nevertheless, on occasion they may be appropriate where there is a need for a forum to allow clear expression of a volume of concern on a controversial proposal. It may also very occasionally be necessary and beneficial in order to assist in the determination of a planning issue. If so it is vital that you avoid acting in a way which could lead to an appearance of pre-judgement or bias. So, if anyone asks you to organise or attend a public meeting about a specific application, you should try to avoid doing so, and you should instead refer the request to officers. Wherever possible you should avoid attending any public meeting at which officers are not present - otherwise you may be accused (rightly or wrongly) of having done so because you favour one side or the other and it might well be difficult to avoid giving that impression. If you do attend, you should do so bearing in mind all the comments set out above and should ensure that it is made clear that you are unable to form or express any clear and unequivocal view before the committee meeting- but that obviously doesn't stop you from listening to what is said or making it clear that you are listening and highlighting the areas that are of most concern to you. Don't forget, though that you need to be able to differentiate, when you do make the decision, between issues which are relevant to planning decisions and those which are not. Officers will be able to assist by answering technical questions and helping to explain why you are unable to favour either side. The same advice as above applies to avoiding expressing any opinion, which would clearly indicate that you no longer had an open mind on the ultimate decision, at such a meeting.

The public meetings referred to here should be distinguished from briefings, developer presentations etc that are organised by officers as part of any pre-application/determination discussion process with councillors/members of the planning committee in relation to applications of major impact or significance (see section 5 below).

5. DISCUSSIONS BETWEEN POTENTIAL/CURRENT APPLICANTS AND THE COUNCIL RELATING TO MAJOR DEVELOPMENT PROPOSALS

16. Discussions between potential applicants/applicants and the council prior to the submission or determination of an application can always be helpful. However, they can be of considerable benefit to both parties in relation to development proposals that are complex, controversial or of major local significance eg large housing estates, waste disposal sites, wind farms, industrial estates/business parks and supermarkets. Unfortunately, it would be easy for such discussions to become, or be seen by objectors to become part of the lobbying process on the part of the applicant.
17. It is therefore essential that where any discussions are held in relation to such major development proposals it is done within carefully established guidelines (as set out below) to protect the council and councillors from allegations of bias, pre-determination etc.
18. All arrangements relating to pre-application/determination discussions for major development proposals should be made by officers. Where councillors receive a request to engage in such pre-application/determination discussions from an applicant or potential applicant they should refer such request to the Planning Case Officer who will consult the Chair of the relevant committee or sub-committee as to whether pre-application discussions are considered appropriate in the circumstances and, if so, the form that such discussions will take.
NB. This will not preclude councillors attending informal consultation events where there is no officer present.

The most appropriate methods of engaging councillors in pre-application/determination discussions are:

- Interim committee reports on pre-application discussions (at the request of a councillor, subject to the approval of the Chair of the relevant committee or the Councils Chief Planner);
- Public developer presentations to committee;
- Development control forums.

Informal private briefings or private developer committee presentations may

occasionally be appropriate but must be handled carefully to avoid third parties becoming suspicious of the process and the reasons for a private meeting.

19. Whatever method of pre-application/determination discussion is adopted, the following guidance will apply:

1. The purposes of councillors becoming engaged at that stage should be made clear by the relevant committee/sub-committee Chair or planning case officer at the start of the discussions. The purposes can be summarised as:
 - Keeping councillors better informed on major applications and helping them to learn more about emerging proposals;
 - Engaging members on issues to be dealt with in a formal submission;
 - Taking account of emerging or existing community concerns at a formative stage;
 - Obtaining initial member guidance for officer negotiations on major applications;
 - Identifying issues to be dealt with in any further submissions;
 - Reinforcing Councillors' roles in their communities.
2. The Chair or planning case officer will also make clear from the outset that the discussions will not bind the council to make a particular decision and that any views expressed are personal and provisional.
3. Officers should always be present with councillors at any such pre- application/determination discussions. They will be responsible for advising impartially on all planning issues including the development plan, the interpretation of relevant policies and any material planning considerations. Councillors should avoid giving separate planning advice during such discussions as this could result in inconsistent information being given. Neither should councillors become drawn into negotiations with applicants or potential applicants.
4. A written record of all pre-application/determination discussions should always be made by the officer present. This note will be placed on the public planning case file to ensure transparency.
5. Discussions with councillors at pre-application/determination stage should not be seen as:
 - A means by which to find out councillors' views on a proposal. Councillors may be in a position to give a preliminary view on a proposal but any members of the

planning committee (who are likely to be determining the application when it is submitted) will be advised that they should not express a view which could give the impression that they have pre-determined their position;

- An opportunity to conduct negotiations on the application in public;
- Any substitute for the formal consultation and processing of an application;
- A means by which potential applicants can seek to hold confidential discussions with councillors on the merits of the proposal.

6. Any member of the planning committee who elects, at such discussions, to voice a clear and strong view for or against the proposal being discussed in pursuit of their community champion role could be considered to have pre-determined their position and prejudiced their ability to vote in relation to any forthcoming planning application. They should therefore seek advice from the Service Director – Legal, Governance and Commissioning as to their future participation in the decision making process.

6. GUIDANCE TO COUNCILLORS WHO ARE ALSO MEMBERS OF A PARISH OR TOWN COUNCIL

20. The potential problem is that if you are involved in a meeting of the parish/town council or its planning committee which decides on the recommendations or comments which are to be given to KMC on particular planning applications and then are also a member of the planning committee which makes the final decision on those applications, you are at risk of being considered to have already made up your mind before coming to that committee and therefore being biased, in legal terms, thus invalidating the committee's decision.

21. To minimise this risk, therefore, if you are a member of the KMC planning subcommittee you should always:

- i. make it clear at any meetings of the parish/town council that any views you express and your vote, if you give one, are based solely on the limited information which is before you at that meeting;
- ii. make it clear that you are reserving your judgement and independence, when any application comes before the KC committee, to make a fresh decision on each application on the basis of all the relevant information which is available to that meeting and based also on your overriding duty to the whole community and not just the people of the area, ward or parish/town; not in any way commit yourself as to how you may vote when the proposal comes before the KC committee;

- iii. ensure that the above, or something to that effect, is noted in the parish/town minutes.

22. In addition, any member of a parish/town council (whether or not on its planning committee) needs to declare that membership at the KC planning subcommittee when considering any application on which the parish/town council has expressed a view or made comments. Clearly, if the parish/town council has a greater interest than that (eg the application has been made by the parish/town council or significantly affects parish property), you should consider whether that membership constitutes an Other interest. That can be done, of course, at the start of the planning subcommittee meeting in the normal way.

23. While the process above is a way of minimising the risk of successful challenge, it does need to be remembered that the public and press can misunderstand or (innocently or otherwise) misrepresent your actions which could lead to unjustified criticism or misguided legal challenge. There is also, of course,

inevitably the risk that on occasion for some reason something may go wrong and the proper procedure not be appropriately followed. In the light of the increasing tendency to litigation, therefore, although this Council has not so far experienced such a problem, the best advice is, where possible, to avoid playing the dual role and therefore to choose whether to go on the parish/town council's planning committee or the KC subcommittee, but not both. That would be the only way of clearly avoiding any of the potential risks and problems referred to above.

7. COUNCILLOR COUNCIL PARTNERSHIP DEVELOPMENT AND DEVELOPMENT ON COUNCIL LAND

24. Many of the Council's functions give rise to development which requires planning permission. Similarly, many of the activities carried out through partnerships require planning permission. From time to time the Council will also dispose of land for purposes requiring planning consent. It is important to ensure that particular care is taken with such applications to demonstrate that no preferential treatment is given to them as this could easily give rise to suspicion of bias or impropriety.

25. Such applications are dealt with in exactly the same way as any other planning application and members need to take care that they also treat them in the same way when making decisions. It's vital to demonstrate this split between promoting a scheme and making the planning decision; otherwise the latter will inevitably risk being challenged as biased.

26. If you were involved in a meeting which made a decision giving rise to the submission of such an application, you should avoid taking part in the decision making process unless you are confident that you can clearly demonstrate that you are able to approach the determination of the application with an entirely open mind. This will apply principally to members of the Cabinet, through meetings of either the Cabinet or a Cabinet committee. In addition, if you are a director on the board of a partnership company which is submitting an application then you will most probably be best advised to declare a Disclosable Pecuniary Interest under the councillors' code of conduct and leave the meeting for the consideration of that item. Similarly, if the proposal is a major council- driven project of such significance to your ward or to the borough as a whole that you want to support it or express your clear views about it, you can do so, but then you will need to consider whether or not it is appropriate for you to remove yourself from the decision-making on the planning application so that you do not expose yourself and the Council to allegations of bias or predetermination.

8. SITE VISITS

27. The purpose of a site visit is to enable committee members to see the physical attributes of the site and its setting which are part of the material considerations in cases where these are not readily capable of being appreciated from documentary material. Officers may arrange a site visit where they consider it to be appropriate.

You, as a ward councillor, may also request a site visit on any application being considered by committee within your ward, provided that the request is made in writing to the planning officer with a reason which relates to some aspect of the site or the development (you should have regard to the provisions of paragraph 9.6 below to help you to formulate appropriate reasons in support of your site visit request) and takes account of the purpose of site visits mentioned above and which can be incorporated in the officer's report to committee; and the request is lodged as soon as possible and in any event before the finalisation of the agenda for the -committee at which the application is due to be considered in order to allow it to be included on the agenda and the itinerary. Remember, however, that if in that written request you express a strong opinion on the merits of the application, you may well disqualify yourself from taking part in the decision. Try to limit your comments to identifying issues which you think the site visit will help to clarify. This advice also applies if you request that a decision is referred to committee rather than being made by officers.

28. Alternatively, the committee may itself decide to defer an application for a site visit through the normal course of debate and vote.

29. On a site visit, councillors will have the opportunity to view the site and officers can point out significant features. You should try to avoid being lobbied by the public, but if this is unavoidable, you should react as in the guidance on lobbying above and declare the fact on return to the committee meeting room.

30. If other ward councillors attend a site visit, they should not carry out any lobbying of their own and should not join members of the planning committee on the site visit bus.
31. Anyone (public or ward member) who is unable to attend the meeting to present their views will not be able to use the site visit for that purpose and should, therefore, be encouraged to put their views in writing to the planning officers beforehand.
32. All members of the committee should attend site visits since they are an integral part of the committee decision-making process. However, since this does not always happen you should try to avoid asking officers for additional information until you get back to the meeting room. Nevertheless, to ensure that all councillors at the meeting have, as far as possible, the same information before them, officers will provide at the meeting a summary of any significant additional information provided or issues raised on the site visit.

9. CONDUCT AT THE COMMITTEE MEETING

33. Separate guidance set out in The Public Speaking Protocol is available for members of the public on the process allowing them to put their views in the course of the debate on any particular application. Bear in mind that many of them will not be familiar with planning procedures or with what is or is not a material consideration. Nevertheless, they should obviously be treated with respect. It is also vital that the procedure for public comment is closely followed in every case, to avoid complaints that some individuals are being treated differently from others.
34. Ward Councillors who refer items to a planning committee must attend the meeting in person (or nominate a same ward councillor colleague) to explain the reason for the referral. Ward Councillors will have up to 5 minutes to explain the reason for the referral and their issues with the application. By exception and with agreement of the Chair of the Committee virtual attendance is acceptable for the item referred to the Committee.
35. Councillors who attend the committee as observer in

accordance with Council Procedure Rule 36 (CPR 36) together with any member of the committee who has indicated that because, for instance, they can no longer demonstrate that they retain an open mind as to the merits of an application, he/she will not be voting, but still intends to contribute to the debate, will be bound by the 5 minute time restriction specified in CPR 36.

36. Every effort will be made to ensure that the seating arrangements make it clear who are the members of the committee. Wherever

possible, therefore, the public will be kept separate from the committee members and other members of the Council should also avoid sitting with the members of the committee.

37. If you are a member of the committee, you should, as far as possible, avoid contact with members of the public. This will ensure that you are not subject to last minute lobbying, or provision of information which is not available to the rest of the meeting, and it will also protect you from appearing to favour or have a relationship with one side or the other on a particular application. This applies before, during and immediately after the meeting. Only the chair should speak to members of the public during the meeting or ask questions (eg for clarification). If any other councillor needs clarification, they should raise the issue with the chair, who will decide how to deal with it.

38. Remember that you must be able to justify any decision on planning grounds. If you wish therefore to vote on a decision in a way which is different from the officers' recommendation, you should be clear what your reasons are for that.

39. Relevant planning issues, which you can take into account, include:

- The Development Plan and the various policies which it contains;
- National or regional guidance;
- The Council's supplementary planning guidance/documents [Remember that if you are proposing not to follow any one of the above three, then you'll need reasons for that too.];
- The planning history of the site;
- The visual impact of the development;
- Effect on public amenity;
- Access, traffic and highway considerations;
- Impact on listed buildings, conservation areas or protected trees;
- The views of local people insofar as they are based on relevant planning issues.

When formulating reasons which you consider will justify a decision contrary to the officer's original recommendation you should always have regard to the

principles set out in paragraph 1.3 above.

Matters which are not material planning considerations and which, therefore, cannot be taken into account include:

- Effect on property values;
- The character, identity or personal circumstances of the applicant or objectors;
- Boundary or property disputes;
- How the application affects a view (as opposed to the wider effect on public amenity);
- Issues of commercial competition;
- Land or property values;
- Moral or ethical issues or judgments;
- Weight of numbers of public opposition or support in itself - as opposed to relevant planning basis for such views;
- Political manifesto commitments.

40. Officers will ensure that the practice of seeking clarification when councillors' reasons are in doubt is always pursued and -committee chairs, before putting to the vote a proposition or amendment differing from the recommendation should expressly obtain clarification of reasons. If councillors differ as to choice of reasons, then that should itself be the subject of separate amendments. Reasons will be particularly important where officers' advice is strong. Officers will normally indicate where a decision is a close call and the recommendation is therefore on balance. In those circumstances you may simply take a different view of the balance. Where the officer view is unequivocal you need first to be clear in your own mind why you disagree. Officers are professional and experienced and while they are no less fallible than anyone else, their views should be properly considered. It's unreasonable and won't achieve what you want if you simply disagree and then expect officers to work out why. It's your decision and they must be your reasons.

41. Similarly, if your view is that a policy, such as green belt, for instance, shouldn't be applied, you need to have a clear reason for that, relevant to the way the policy is expressed. Officers can help with those sorts of issues if you are clear yourself what the problem is. On the other hand, if you are clear in your reasons and clear that they are proper planning reasons, that will make it very much easier for officers (or indeed, you yourself) to defend and explain them if they are challenged on appeal or by judicial review. Ideally there should be a partnership here.

Officers are professionals; councillors have democratic accountability. But both have to follow the rules.

42. It is the role of the Committee Chair (or Vice Chair if substituting) to guide, manage and control the meeting so that procedures are properly followed, everyone gets a fair chance to have their say, the debate remains focused and relevant, proper standards are maintained and the process is as efficient as possible leading to a clear and rational decision. Councillors (and officers) should do everything possible to co-operate and assist with that. As part of that role, the Chair (or Vice-Chair if substituting) may request that a recorded vote is taken on a particular application for eg if the application is particularly controversial, there is considerable public interest in the proposal or the decision would be contrary to the officer recommendation or the development plan. It is also the role of the Chair (or Vice Chair if substituting) to summarise and clarify the decision of the committee for the benefit of members of the public so that there is no doubt as to the outcome of the debate.

10. TRAINING

43. Making good, justifiable planning decisions is not something which can be done by instinct.

44. Before serving on any committee making planning decisions (whether as a full member or as a substitute) any councillor must have undergone satisfactory training, as referred to in this section, in both the procedural issues outlined in this protocol and in the basic principles of planning, so that you can understand the basis on which decisions need to be made and on which officers prepare reports. It will also help you to take a rational approach to the issues discussed in 9.7 above. -This requirement will also apply to training required to refresh and update knowledge and understanding.

45. Suitable training will be provided sufficient to ensure that councillors who wish to be involved in planning decisions can do so, but you do need to make an effort to attend, since it is not possible to make arrangements which are totally convenient for everybody.

46. Groups must not nominate anyone for membership of any committee which will be making planning decisions unless that councillor has either undergone training or is prepared to do so before taking part in the relevant committee meetings. Councillors should also be prepared to attend annual updating training. It is necessary for groups to identify and select the appropriate number of members from their group who fulfil these conditions.

47. Annual updating training will be provided. It is necessary that, in order to continue to sit on a planning committee or subcommittee, you will take part in this refresher training.

11. ADVICE TO ALL COUNCILLORS

General

48. Any councillor, whether or not involved in decision making on planning issues, could benefit from reading this protocol as it may assist from time to time in explaining issues to constituents who are puzzled by the planning process. All councillors also need to understand how best to represent their constituents when not involved in the decision making process.
49. You may well be lobbied by individuals in favour of or opposed to any application, or, indeed, you may have views of your own as the local ward councillor. If so, those views should be expressed to officers. You should avoid lobbying or trying to persuade members of the decision making committee to come to a view beforehand. Doing so will only put at risk that member's ability to take part in the decision.
50. You should not, however, exert any improper pressure on officers to make a decision or recommendation contrary to their professional judgement. If you disagree with that judgement you can, of course, raise the issue with a more senior officer. Nor should you lobby members of the sub-committee - in particular make sure you avoid the temptation to seek the support of your ward or group colleagues on the planning sub-committees. Doing so could make any decision susceptible to challenge.
51. Please also note the advice on requesting site visits in section 8 which applies to all ward members.
52. Local ward councillors may attend site visits, but will not be able to carry out any lobbying on the merits of an application on such occasions.
53. Ward councillors may also attend the committee meeting at which decisions are taken. If you do so, you should sit apart from the committee members, with those attending from the public. If you wish to speak on a particular application, you should do so only when specifically invited by the Chair and should act in accordance with the Public Speaking Protocol.
54. If you are unable to get to the meeting, then any views which you wish to express should be put in writing to the Planning Officer.

55. You should remember that officers have a duty to give impartial advice on planning applications and other planning matters and to make recommendations (or decisions on delegated matters) in the light of all the relevant planning issues using their professional judgement. Where there are disagreements between councillors and officers, these should be approached with mutual respect and while you may obviously express your disagreement, that should be on a rational basis and you should avoid personal criticism or abuse.
56. You will be informed when training in planning matters is being provided. While training is extremely important for councillors who will be making decisions, it is open to all and any councillor could benefit from the information which is provided.

Referring applications to committee

57. Under the officer delegation scheme, a ward member is able to refer for committee decision any application which would otherwise be determined by officers. Any such request must be made in writing and must specify their reasons for making the request which must reasonably relate to some aspect

of the site or the development (you should have regard to the provisions of paragraph 9.6 above to help you to formulate appropriate reasons in support of your request for referral to Committee). To be a valid request the Chair of the relevant committee or sub-committee must have confirmed that the ward member's reasons for making the request are acceptable. Requests should ideally be received before the earliest date for decision - i.e. three weeks after receipt of the application. However, requests received later than this will still be valid provided appropriate reasons are given in support of the request and the Chair is prepared to exercise his/her discretion to consider the late request.

58.

Ward members who are also members of the committee (or substitutes) should remember that if, in your written request for referral of an application to committee, you express a strong opinion on the application which gives a clear impression that you have a closed mind as to the merits of the proposed development, you may well disqualify yourself from taking part in the decision.

Planning applications submitted by councillors and members of their families.

59. Planning applications that are submitted to the LPA by serving councillors, their close associates and relatives, can easily give rise to suspicions of impropriety. Nevertheless, it is perfectly legitimate for such applications to be submitted to the authority for determination. However, it is vital to ensure that these applications are handled in such a way that gives no grounds for accusations of bias or preferential treatment.

60.

61. When a councillor submits a planning application in their personal capacity, or where their spouse or civil partner; or person living with them as if a husband, wife or civil partner has submitted a planning application in their personal capacity that Councillor will have a disclosable pecuniary interest (DPI) in that application and should not take part in the decision making process relating to the application and must leave the room or send a substitute should their application be required by the Scheme of Delegation 2023 to be determined at a planning committee. If you are a councillor in that position you should not speak as a ward councillor at the application that relates to either your application or that of your spouse, civil partner or a person you live with as a husband, wife or civil partner. If you are a member of the Planning Committee at which the application is being considered you will need to declare your interest and leave the room for that item of the agenda. Alternatively, you might want to consider whether or not to arrange a substitute to attend the meeting.
62. You will also be considered to have an Other interest in any application submitted by a member of your family or a close associate. Accordingly, if you are a member of the planning committee (or sitting as a substitute), you must leave the room if you consider your continued presence is incompatible with the Council's Code of Conduct or The Seven Principles of Public Life. You should also consider whether or not to speak as a Ward Councillor in such circumstances. In making such a decision you must consider the Principles of Public Life which are set out at in full at clause 3 of the Code of Conduct for

Members or you can seek advice from the Service Director – Legal, Governance and Commissioning regarding this matter or any of the issues raised above.

63. It is important to remember that councillors must not seek improperly to influence the decision on their application. Some councillors may therefore, in this situation, consider it unwise to make a statement to the committee and instead may prefer to rely on a third party or planning agent to make their case to the committee for them. However, councillors who do choose to make a statement to the committee personally should observe the same 3 minute time limit set out in the Public Speaking Protocol that applies to members of the public when addressing the committee.
64. This advice also applies to all councillors who are not members of the committee or acting as substitute but who choose to attend the committee at which their planning application (or that of their family member) is due to be determined if required by the Scheme of Delegation 2023 to be determined at a planning committee.

Appendix F – Changes to Scheme of Delegation (Strategic Director Environment and Climate Change)

Proposed changes shown as tracked changes (in coloured text) below:

Strategic Director Environment and Climate Change

The holder of the post of Strategic Director Environment and Climate Change shall be responsible for the strategic direction and overall management and delivery of the functions and responsibilities of the Environment and Climate Change Directorate and without prejudice to the foregoing, shall have power to discharge the following functions and responsibilities, subject to compliance with the Constitution, FPRs, CPRs, approved policies of the Council or the Executive (as appropriate) and all legal requirements:

A. Highways Transportation and Public Rights of Way matters Non-Executive Functions

1. All relevant functions and responsibilities of the Council as:
 - Local Highway Authority (within the meaning of s.1 Highways Act 1980);
 - Surveying Authority (within the meaning of the Wildlife and Countryside Act 1981;
 - Access Authority (within the meaning of Section 1(2) of the Countryside and Rights of Way Act 2000;
 - Street Authority (within the meaning of Section 49 of the New Roads and Street Works Act 1991);
 - Traffic Authority (within the meaning of Section 121A of the Road Traffic Regulation Act 1984).

relating to highways transportation, public rights of way and highways development management included within the terms of reference of the Planning Areas Sub-Committees.

- (1) Matters are referred to the relevant Planning Committee as specified in paragraph 3 of the General Provisions and in the following cases:
 - i) where the delegated officer so decides:
 - a) with the agreement of the Chair of the relevant Planning Committee; or
 - b) due to the significant volume of local opinion (including through Parish/Town Councils);
 - ii) where the Chair of the relevant Planning Committee so requests;
 - iii) where any member so requests in relation to any matter within their ward.
The member shall specify in writing his/her reasons for making the request;
 - iv) where there is no majority support for the proposed action by the three ward members (and for the purposes of this paragraph, the non-response of any ward member shall not be treated as opposition to any proposal);

v) in respect of all applications for the modification of the Definitive Map and Statement under the Wildlife & Countryside Act 1981 (or any legislation revoking or re-enacting that Act with or without modification) unless the chair of the relevant planning committee considers matters do not require determination by the planning committee and can remain delegated to the relevant Strategic Director.