

PLANNING COMMITTEE**11 November 2021**

REPORT TITLE	CHANGES TO THE SCHEME OF DELEGATION TO OFFICERS FOR THE DETERMINATION OF PLANNING RELATED MATTERS
REPORT OF	DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

The purpose of this report is to recommend a revised scheme of delegation relating to the determination of planning applications and planning related matters and an updated speaking protocol along with related guidance on the right of the public to speak.

This matter affects all wards within the Borough.

This is not a Key Decision.

RECOMMENDATION

Planning Committee is recommended to approve:

1. The amended Scheme of Delegation for Determination of Planning Applications and Planning Related Matters as referred to at Appendix 1 of this report;
2. The amended Speaking Protocol for Planning Committee as referred to at Appendix 2 of this report; and
3. Updated The guidance on the Right to Speak at Planning Committee and Strategic Applications Sub-Committee meetings

SUPPORTING INFORMATION

1.0 REASON FOR RECOMMENDATION

- 1.1 The planning scheme of delegation was last updated in 2014 and is in need of review and revision.
- 1.2 On 15 October this Committee resolved to temporarily authorise the Director of Regeneration and Place to exercise delegated functions further to the existing 2014 scheme of delegation. This was to enable the efficient running of the service during the Covid 19 pandemic. The revision of the scheme set out in Appendix 1 is recommended to consolidate and update the current scheme and to enable the continued operation of the delegated powers agreed in 2020 which have worked well for the last year.
- 1.3 The Speaking Protocol is proposed to be revised to reflect the amended Scheme of Delegation and to reflect the relaxation of Covid restrictions.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Not updating the Scheme of Delegation or Speaking Protocol. This is not recommended as the current scheme was approved in 2014 and is overdue for an update to reflect best practice. The lessons learnt from the currently adopted Speaking Protocol should be applied

3.0 BACKGROUND INFORMATION

- 3.1 It is for this Committee to determine the basis on which delegated powers may be given to the Director. The amendments proposed within this report seek to delegate authority for determining planning applications and planning related matters to the Director of Regeneration and Place, assisted by the Assistant Director (Planning and Building Control), the Development Management Manager and Area Team Leaders/Principal Officers.
- 3.2 Central Government and the Local Government Association consider that a level of delegation above 90% should be achieved by local planning authorities. This Council's level of delegation for determining planning applications is currently at 97%. This is the average for Unitary authorities but has been achieved during the period with the delegated powers agreed in 2020 in place. In the years January 2018 to December 2018 and January 2019 to December 2019 Wirral had 95% of decisions delegated to officers below the average for other unitary authorities at 96%.
- 3.3 The Scheme of Delegation for Determining Planning Applications was last fully reviewed in March 2014. Central Government advises that such schemes should be regularly reviewed and updated to take account of any changes to national and/or local planning policies and to allow for the delivery of decisions as efficiently as possible, particularly having regard to performance improvement and best value.

- 3.4 In June 2019 a planning improvement peer challenge was carried out by the Local Government Association (LGA) in co-operation with the Planning Advisory Service. A report was then published by the LGA which made findings, amongst other matters, that the Planning Scheme of Delegation needed to be reviewed to support efficient and effective decision making and the growth ambitions of Wirral. The work of reviewing the scheme of delegation became subsumed by the revision of the Constitution with a view to moving to a Committee system and then the Covid 19 pandemic
- 3.5 The proposed Scheme of Delegation for the Determination of Planning Applications and Planning Related Matters is set out as Appendix 1 to this report and the key amendments are:
- The addition of the substance of the motion from October 2020 Planning committee to allow the director in consultation with chair and party spokes to approve the listed categories of development without needing to refer to full committee;
 - The categories of applications that have to be determined by committee reflect the categories set out in the previous 2014 planning scheme of delegation but are updated to reflect current guidance and in the interests of clarity.
 - The powers that the director has to taking enforcement action are set out including limitations that require consultation with Chair and Party Spokespersons.
 - Part 1 (d)-(f) these replicate the provisions in the previous Scheme of Delegation.
 - Section 2 is has provisions that were in the previous Scheme of Delegation,
 - there are other powers of the Director set out in relation to legislation, some have been removed as they no longer fall under the regeneration directorate.
- 3.6 The current Speaking Protocol was introduced in October 2020. Suggested changes that have been made to improve clarity and the operation of the protocol including removing the previous different treatment of written objectors and petitioners,
- 3.7 Currently applicants cannot make representations if an objector or petitioner chooses not to exercise their right to speak. This has been amended to allow applicants to make representations to the committee.
- 3.8 The speaking protocol had Covid-19 allowance to due to restrictions introduced during the pandemic these are restrictions have now been lifted and as such the allowances can now be removed.
- 3.9 Appendix 3 to this report sets out suggested revised Guidance on the Right to Speak at Planning Committee and Strategic Applications Sub-Committee meetings. The main adjustments are removal of provisions relating to virtual meetings and providing for applicants/agents to speak after consultees and ward members.

4.0 FINANCIAL IMPLICATIONS

4.1 There are no financial implications arising directly from this report.

5.0 LEGAL IMPLICATIONS

5.1 The legal basis for delegation is Section 101 of the Local Government Act 1972, as amended. Elected Members determine the basis on which a delegated function operates, the level of Member involvement and the circumstances in which an officer's delegated powers to make a decision may not be exercised.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There are no implications for staffing ICT or assets arising directly from this report.

7.0 RELEVANT RISKS

7.1 It is important that a balance is struck between the need to achieve timely decision and the need to ensure an effective process. The proposals within this report are designed to achieve the most economical use of both members' and officer time and to allow the focus to be on the more complex and/or contentious planning applications. The proposals within this report aid in striking that balance and will enable the Council to comply with its duty to follow good governance processes.

8.0 ENGAGEMENT/CONSULTATION

8.1 Consultation has taken place with the Chair and Spokespersons of this Committee in terms of the contents of this report.

9.0 EQUALITY IMPLICATIONS

9.1 There are no significant equality and diversity implications arising from the proposals set out within this report.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no significant environment or climate change implications arising from the proposals within this report.

11.0 COMMUNITY WEALTH BUILDING

11.1 There are no implications for community wealth building arising directly from this report.

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APPENDICES

Appendix 1 – Scheme of Delegation for the Determination of Planning Applications and Planning Related Matters

Appendix 2 – Protocol for the Right to Speak at Planning Committee and Strategic Applications Sub-Committee meetings

Appendix 3- Guidance on the Right to Speak at Planning Committee and Strategic Applications Sub-Committee meetings.

BACKGROUND PAPERS

Historical planning data sets

<https://www.gov.uk/government/statistical-data-sets/historical-and-discontinued-planning-live-tables>

2014 Scheme of Delegation for the Determination of Planning Applications and Planning Related Matters.

<https://www.wirral.gov.uk/sites/default/files/all/planning%20and%20building/planning/planning%20decision%20process/SCHEME%20OF%20DELEGATION%20FOR%20THE%20DETERMINATION%20OF%20PLANNING%20APPLICATIONS%20AND%20PLANNING%20RELATED%20MATTERS%20%28MARCH%202014%29.pdf>

Planning Improvement Peer Challenge

<https://www.wirral.gov.uk/sites/default/files/all/planning%20and%20building/Wirral%20Council%20Planning%20Peer%20Review%20Final%20Report%20to%20Council%20July%202019.pdf>

SUBJECT HISTORY (last 3 years)

Member Decision	Date
Planning Committee	15 October 2020
Planning Committee	19 March 2020



**DRAFT SCHEME OF DELEGATION TO
OFFICERS FOR THE DETERMINATION OF
PLANNING
APPLICATIONS AND PLANNING RELATED
MATTERS**

The Director of Regeneration & Place

1. The Director of Regeneration & Place has authority to determine all major, minor and other applications submitted to, by or on behalf of the Borough Council other than those listed under 1a and 1b below and take enforcement action as detailed in 1c below;
 - a. subject to the following categories in consultation with Chair and Party spokespersons;
 - i. Any personal/private application made by any Member of the Council, or any member of staff employed in the Council's Planning Service;
 - ii. Any application where an Elected Member is involved in any capacity as an agent or consultant where at least one objection has been received;
 - iii. Applications where it was proposed to make a decision that is contrary to the development plan;
 - iv. Decisions that would need to be referred to the Secretary of State with the exception of applications for Planning Permission and/or Listed Building Consent to Grade I listed buildings, where there are statutory objections;
 - v. Recommendations to not take enforcement action relating to Priorities 1, 2 and 3 of the adopted Planning Enforcement Policy on the grounds of non-expediency.
 - vi. Decision to revoke a TPO and not replace it.
 - b. Applications to be determined by Committee:
 - i. the following categories of applications for planning permission:
 - large-scale major developments (defined by the Ministry for Housing, Communities and Local Government (MHCLG) as those of 200 houses or more or 10,000 square metres of non-residential floor space) which, by their nature, (e.g. scale, location etc.) have wider strategic implications and raise issues of more than local importance;
 - planning applications for mineral extraction or waste disposal, other than small scale works which are ancillary to an existing mineral working or waste disposal facility;
 - significant applications by Wirral Borough Council to develop any land owned by the Council, or for development of any land by the Council or by the Council jointly with any other person (Regulation 3 applications);
 - any application where the Director responsible for the planning service considers it inappropriate to exercise delegated powers having regard to the public representations received and consultee responses;

- Decisions where a claim for compensation from the Council may arise or which otherwise may involve a financial payment.
- ii. Applications where any Elected Member has, prior to the last date for comment as published on an application for their Ward, made a written request to the Director that the application be referred to the Planning Committee and has given sound and reasonable planning grounds for that request. In the event that a ward councillor does not register their intention to speak to the item at Committee consent may be sought from the Committee to withdraw the agenda item to enable it to be determined under officer delegation.
 - iii. Applications that, within the specified consultation period attract a qualifying objection of either:- one or more petitions of objection totalling 25 or more individual signatories; or 15 individual objections in writing. unless the application is being recommended for refusal, in which case, the application shall remain under officer delegated powers. The lead petitioner will be informed of the recommendation to refuse under delegated power.
- c. to take enforcement action on all matters relating to the issue, modification, service and withdrawal of Enforcement Notices, Planning Contravention Notices, Breach of Condition Notices and Discontinuance Orders, including the following:
 - i. In cases of urgency, in consultation with the Chair and Party Spokespersons of the Planning Committee, to issue and serve Stop Notices.
 - ii. In consultation with the Chair and Party Spokespersons of the Planning Committee to serve Temporary Stop Notices.
 - iii. To take enforcement action relating to Priorities 4 and 5 of the adopted Planning Enforcement Policy.
 - d. to refuse applications in relation to telecommunications development;
 - e. where it is proposed to recommend any proposals requiring prior notification approval, after consultation with the Chair and Party Spokespersons of the Planning Committee, to determine applications in relation to such developments which, following the receipt of a petition or referral by an elected member, cannot be dealt with by the Planning Committee within the statutory 56-day period, subject to the reporting of the use of such delegated authority to the next available meeting of that Committee, for information;
 - f. to determine all planning and related applications where decisions would require a Section 106 obligation.

2. The Director of Regeneration & Place is authorised to undertake the following functions and powers:
- a. To exercise all the powers and duties of the Council in respect of the Town and Country Planning Act 1990 (as amended) (“the Act”) as follows:
 - i. Reject an outline application because of insufficient details.
 - ii. Require owners to carry out proper maintenance of land where its condition detracts from the amenity of the immediate surrounding area, including the service of appropriate statutory notices under Section 215 of the Act.
 - iii. Serve planning contravention notices and to hold discussions as a result of the “time and place” procedure under Section 171(C) of the Act.
 - iv. Make and confirm emergency Tree Preservation Orders except where objections/representations have been received and confirm unopposed Tree Preservation Orders under Section 201 of the Act.
 - v. Determine applications for the lopping, felling or topping of trees covered by Tree Preservation Orders and require such replanting as is considered necessary.
 - vi. Issue screening opinions and scoping opinions (under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017.
 - vii. Authorise entry on to land under Sections 196 214(b) and 324 of the Act and under Section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
 - viii. Conservation area protection notification under Section 2(11) of the Act
 - b. To exercise all the powers and duties of the Council arising under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 relating to listed buildings and conservation areas.
 - c. To exercise all the powers and duties of the Council arising under the provisions of the Planning (Hazardous Substances) Act 1990.
 - d. To exercise all the powers and duties of the Council arising under the Town and Country Planning (Control of Advertisements) Regulations 2007 or any amendments to those regulations.
 - e. To exercise all the powers and duties of the Council arising under the provisions of the Hedgerows Regulations 1997.
 - f. To respond to consultations from neighbouring local planning authorities on planning applications.
 - g. To take action to prosecute offences under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990.

- h. To exercise all the powers and duties under Part 8 of the Anti-Social Behaviour Act 2003 to consider and determine complaints about high hedges.

Appendix 2- Protocol for the Right to Speak at Planning Committee and Strategic Applications Sub-Committee meetings

In this protocol reference to Committee shall be construed (as appropriate) to either the Planning Committee or the Strategic Applications Sub-Committee.

1. When an application before the Committee for decision has a related petition of objection of 25 signatories (or more) or 15 (or more) individual letters of objection, a spokesperson for the objectors is given the right to address the Committee. The spokesperson may be the lead petitioner, a representative of the written objectors, their agent, or their ward councillor. A person seeking to exercise the above right to speak must lodge a written request with the Council's Committee Services by 12 noon, 3 working days prior to the Committee date.
2. It will be a matter for the Chair (where appropriate with prior consultation with ward councillors) to determine who should speak for objectors if more than one objector has requested to speak. The Guidance on Speaking at Committee contains more details on this process.
3. Where there is a second petition the Chair will generally exercise a discretion to allow one spokesperson for the additional petition to speak to provide the Committee with further information other than what has already been said. A further two minutes is allowed for secondary petitioners to make representations to the Committee.
4. A Ward Councillor may address the Committee on any application made in relation to their Ward or made in relation to a matter which will have implications for their ward.
5. If a statutory consultee or local consultee wishes to make representations on any application before the Committee, they shall be able to do so. They will be given a maximum of 3 minutes to address the Committee.
6. The applicant or their agent will be given the right to speak in respect of their application whether or not the petitioners' or objectors' spokesperson has exercised their own rights to speak.
7. Time limits for speakers – Speakers will be expected to conclude their presentations to the committee within 5 minutes. All time allocations referred to in this protocol do not include the time spent in answering any questions the Committee may raise with the speaker. saying no material to be circulated at the meeting unless by prior agreement
8. Members of the Committee have the right to speak at Committee meetings as set out in the Council's Standing Orders.

Appendix 3- Guidance on the Right to Speak at Planning Committee and Strategic Applications Sub-Committee meetings

If you are thinking of speaking at the committee meeting, please read the following guidance:

1. Who can speak at the Planning Committee meeting?

When an application before the Committee for decision has a related petition of objection of 25 or more signatories or 15 or more individual letters of objection,

(i) a spokesperson for the objectors is given the right to address the Committee. The spokesperson may be the lead petitioner, a representative of the written objectors, their agent or their ward councillor

(ii) the applicant or their agent will be given the right to speak in respect of their application whether or not the objectors or petitioners have exercised their own rights to speak.

2. If I am an objector and an item goes to Committee how do I indicate that I wish to have a right to speak

In addition to applications where there is a valid petition of 25 or more signatories, applications will also go before Committee where there are 15 or more written objections from different households. If you want to be considered for speaking at Committee please therefore leave an email address with any objection so that you can be contacted if this trigger figure is reached.

Once written objections reach the trigger point (15 objections) you will be contacted by a Committee Services officer and asked to confirm if you want to speak

It will then be a matter for the Chair (where appropriate with prior consultation with ward councillors) to determine who should speak for objectors if more than one objector has requested to speak.

4. How many people are allowed to speak?

In circumstances where more than one petitioner / objector wishes to speak the chair will invite you to nominate one spokesperson. If there is a second petition for or against, then the Chair will generally exercise a discretion to allow one spokesperson for the additional petition to speak to add to what has already been said. See below on the time allocated to speakers

5. How much time is allowed?

A total of five minutes is allowed for the lead petitioner. A further two minutes is allowed for secondary petitioners. The applicant or their agent will have five minutes to respond.

Statutory or local consultees will have three minutes to address the Committee.

This time allocation does not include time spent answering the committee's questions.

6. Might I be asked questions by the committee?

Yes, but only questions of clarification on what has been said. You may decline to answer questions.

7. What time should I arrive if I wish to speak?

You should arrive no later 5.45pm and report to the democratic services officer giving your name and the item you wish to speak on.

8. What is the order of the committee procedure?

The chair will take items dependent upon the number of people in attendance.

1. The application is introduced by the Chair.
2. Presentation of report by planning officer.
3. The Chair will call upon the spokesperson for a petition objecting to the proposal to speak. Committee members may ask questions of clarification.
4. The Chair will call upon the spokesperson for the objectors to the proposal to speak. Committee members may ask questions of clarification.
5. If there is a petition in support of the application the Chair will call on them to speak. The Committee members may ask questions of clarification.
6. The Chair will ask if any consultees wish to address the Committee. Committee may ask questions of clarification.
7. The Chair may ask a ward councillor to speak and Committee members may ask questions of clarification.
8. The Chair will call upon the applicant or their agent to speak. The Committee members may ask questions of clarification.
9. The planning officer will comment on any factual matters raised by the speakers.
10. The Committee ask questions to officers and will debate the applications.
11. The Committee will vote on the application and reach a decision.
12. After each decision the Chairman will inform the meeting of the decision.