



PLANNING COMMITTEE

DATE 13 MARCH 2025

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

REPORT SUMMARY

The purpose of this report is to seek Committee's views on a revised scheme of delegation relating to the determination of planning applications and planning related matters. The proposed revisions follow comments from Committee members in previous meetings when dealing with applications submitted under s192 of the Town and Country Planning Act 1990 (as amended) that this type of application would be more appropriately dealt with under delegated powers.

The Director of Corporate Services as Monitoring Officer has power to make minor and consequential changes, such as factual references, changes in the law, changes in process and protocols of Committee and revised arrangements for the distribution of responsibilities and the delegation of powers to officers. This Committee's views are sought on such changes so as to inform the exercise of this power by the Director of Law and Corporate Services.

This matter affects all wards within the Borough.

RECOMMENDATION/S

Planning Committee is recommended to note and comment on the proposed amended Scheme of Delegation for Determination of Planning Applications and Planning Related Matters as referred to at Appendix 1 of this report.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 Planning decisions are made in accordance with the Constitution and the Scheme of Delegation to officers for the determination of planning applications and planning related matters. Following the last review of the scheme in September 2024, there have been a number of applications determined by the Planning Committee made under s192 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) and Planning Committee members have expressed a view that consideration be given to whether these type of applications would be more appropriately dealt with by Officers under delegated powers.
- 1.2 Applications made under s191 of the 1990 Act are similar types of applications, one dealing with existing uses and the other proposed uses, therefore a consistent approach to the determination of both types of applications is sensible.
- 1.3 Applications made under sections 191 and 192 of the 1990 Act are based purely on an assessment of whether planning permission is required for a proposed development or use. As such, no planning judgement can be made in relation to such applications.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The current form of the Scheme of Delegation to officers for the determination of planning applications and planning related matters could remain in its current format which would continue to see applications made under s191 and s192 of the 1990 Act capable of being referred to Planning Committee for determination by either elected members or qualifying objections.
- 2.2 Members could seek other changes to the Scheme of Delegation which would then be considered having regard to the principles summarised at paragraphs 5.2 and 5.3 of this report.

3.0 BACKGROUND INFORMATION

- 3.1 Section 191(1) of the 1990 Act provides that any person who wishes to ascertain whether any existing use of buildings or other land is lawful, or any operations which have been carried out in, on, over or under land are lawful or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, may make an application for the purpose to the local planning authority, specifying the land and describing the use in question.
- 3.2 Section 192(1) of the 1990 Act provides that any person who wishes to ascertain whether any proposed use of a building would be lawful, may make an application for the purpose to the local planning authority, specifying the land and describing the use in question.
- 3.3 In relation to such applications “Material planning considerations” which are as a matter of course considered in planning applications are not relevant. The decision is

to be based strictly on factual evidence, the planning status/history of the site and the relevant law applicable to the circumstances of the case. The planning merits of the existing use or proposed use applied for do not fall to be considered.

- 3.4 Section 191(4) of the 1990 Act provides that if, on an application under that section, the Council is provided with information satisfying it of the lawfulness of the use, operations or other matter described in the application or a description modified or substituted by the Council they should issue a certificate to that effect. In any other case the application should be refused. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the use, operations or other matter are lawful.
- 3.5 Section 192(2) of the 1990 Act provides that if, on an application under that section, the Council is provided with information satisfying it that the new use described in the application would be lawful they should issue a certificate to that effect. In any other case the application should be refused. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
- 3.6 National Planning Practice Guidance sets out that on an application for a Certificate the local planning authority needs to consider whether, on the facts of the case and relevant planning law, the use would be or is lawful. Planning merits are not relevant to the consideration of these applications.
- 3.7 If the recommendations are approved the Director of Law and Corporate Services would then consider using their delegated powers to make the changes to the scheme of delegation outlined within this report or alternatively referring the matter to the Standards and Constitution Committee in accordance with the principles set out in sections 5.2 and 5.3 of this report.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no particular 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. The scheme of delegation sets out 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.
- 5.2 Article 15 of the constitution provides as follows:
"15.3 Changes to the Constitution
(a) Approval. Changes to this Constitution will only be approved by the Full Council after consideration of the proposal by the Standards and Constitution Committee following receipt of a written report of the Monitoring Officer, except that:
(i) changes to the Articles of this Constitution will only take effect from the meeting of Council following the meeting that determines the approval (unless legal advice is received from the Monitoring Officer requiring earlier implementation); and
(ii) minor and consequential changes, such as those:

- (1) to factual references;
- (2) as are required by legislative or legal changes and developments;
- (3) to reflect changes in procedures and protocols adopted by Committees; and
- (4) to reflect revised arrangements for the distribution of responsibilities and the delegation of powers to officers in accordance with decisions taken by the appropriate committee or chief officer authorised to take such action,

may be made by the Monitoring Officer.”

- 5.3 Any proposed change to the Scheme of Delegation which the Monitoring Officer does not consider to be minor will need to be considered by the Standards and Constitution Committee with any onward approval of any changes to be approved by a full Council meeting.

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 decisions 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 contentions 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 This report and the amendments proposed result from comments by members of the Planning Committee at previous meetings requesting that consideration be given to the delegation of the determination of applications made under s191 and s192 of the 1990 Act to Officers as opposed to being determined by Committee.

9.0 EQUALITY IMPLICATIONS

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.

10.0 ENVIRONMENT, BIODIVERSITY AND CLIMATE IMPLICATIONS

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

11.0 COMMUNITY WEALTH IMPLICATIONS

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

report.

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APPENDICES

Appendix 1 – Amended form of Scheme of Delegation to officers for the determination of planning applications and planning related matters

BACKGROUND PAPERS

2024 Scheme of Delegation for the Determination of Planning Applications and Planning Related Matters.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Planning Committee	12 September 2024