

<b>Committee</b>	<b>STRATEGIC PLANNING COMMITTEE</b>	
<b>Report Title</b>	Proposed Temporary changes to the Scheme of Delegation	
<b>Ward</b>	Borough-wide	
<b>Contributors</b>	Director of Planning	9 June 2020

## 1. Introduction

- 1.1. The Council is under a statutory duty to determine planning applications submitted to it. It is important that during these exceptional times the Council is able to continue to determine the full range of planning applications in order to fulfil its statutory duty and to ensure that major regeneration schemes and proposals involving the delivery of much needed affordable housing are not held up.
- 1.2. There is therefore a need to review existing processes to enable virtual planning committee meetings to take place.
- 1.3. Planning decisions are matters of planning judgment, and planning applications are determined either by the Planning Committee or they may be delegated to officers. Planning Committee meetings happen in public where the officer's report to the Committee is discussed, representations are heard, and are important for ensuring democratic and public accountability of decision making. Where officers take decisions, a report is prepared explaining the decision.
- 1.4. Planning committee meetings are resource intensive. A wide range of planning matters go before Planning Committee. For example, some cases which go to Committee are straightforward applications of plan policies and others are complex matters of planning judgment. Some cases are of major public importance to the whole borough, some are of significance to more than just a local area, and some cases which are taken to committee for decision are of limited public interest. This range is caused partly because of the low level of 3 objections resulting in a committee referral. The current public health situation has resulted in a reduced capacity within the Planning service and Planning Committee meetings have been unable to take place. It is proposed that this be addressed by enabling more straightforward applications to be decided by officers for a temporary period, providing appropriate safeguards are built in.
- 1.5. In order to enable these changes to happen it is necessary for additions to be made to the Council's Scheme of Delegation outlined in the Council's Constitution. The Council's Constitution reserves certain matters for determination by the Council's Planning Committees. The terms of reference of Strategic Planning Committee (SPC) at Article 9, enables the Director of Planning to refer any matters falling within terms of reference for Planning Committee A, B or C to SPC where she is of the view that it is a matter that would be more appropriately dealt with by the SPC. In the current emergency this matter is considered to be most appropriate to refer to SPC to seek additional temporary delegations to officers.
- 1.6. The proposed additions to the Scheme of Delegation would enable the Council to deal with the growing backlog of planning applications currently requiring referral to planning committee. Crucially, the proposed additions would mean that decisions can be made on planning applications relating to critical major regeneration and housing schemes. However, it is proposed than any changes should be reviewed after a period of three months. These changes would be made alongside changes to the

Council's Statement of Community Involvement which is due to be considered by Mayor and Cabinet on 10<sup>th</sup> June.

- 1.7. Officers are notifying amenity societies by email and placing a notice on the website about these proposed changes. Any comments received will be reported to Members.

## 2. Recommendations

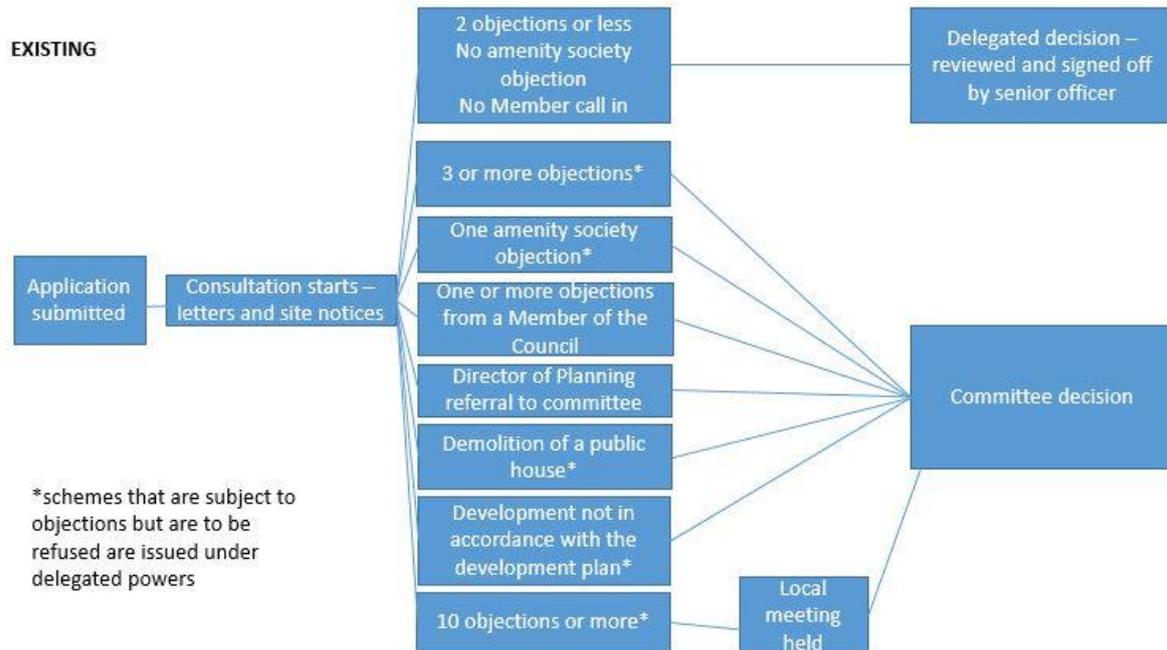
- 2.1. It is recommended that Strategic Planning Committee:
  - 2.1.1. authorise the temporary amendment of the list of matters that are reserved to Planning Committee's A, B and C and to Strategic Planning Committee in the Council's Scheme of Delegation set out on page 311 of the Council's Constitution to enable the following matters to be delegated to officers:
    - Threshold of objections for applications being required to go to Planning Committee for decision to be raised from 3 to 5
    - Any application with an amenity society objection to be subject to case review with Chair to determine whether it is referred to planning committee for a decision
    - Any application with 5-9 objections to be subject to case review with Chair to determine whether it is referred to planning committee for a decision
    - agree that the above changes to working practices will be reviewed by the Strategic Planning Committee after a 3 month period following introduction.
- 2.2. The current COVID-19 pandemic means that in the interests of public safety and the given the need to ensure social distancing, it is not reasonably practicable to hold in-person meetings in public. This position is likely to persist for some time. The Council is under a statutory duty to determine planning applications submitted to it. It is vitally important that the Council is able to continue to determine the full range of planning applications in order to fulfil its statutory duty and to ensure that major regeneration schemes and proposals involving the delivery of much needed affordable housing are not held up. The ability of the Council to process critical major housing or regeneration planning decisions is one of the indicators which there is currently a requirement to report on weekly.
- 2.3. Most decisions on planning applications are delegated to officers. However the Constitution currently states that, unless senior planning officers intend to refuse planning permission under delegation, a decision on a planning application will be made by a Council Planning Committee in the following circumstances:
  - There are three or more valid planning objections; or
  - There is one or more objection from a recognised residents' association or community/amenity group; or
  - There is one or more objections from a member of the Council.
  - The application is for development which is not in accordance with the approved development plan documents or other approved planning policies or
  - In the opinion of the Council's Director of Planning the matter would be more appropriately dealt with by the relevant committee.
  - Consideration of all town and country planning matters relating to the demolition of any building that is in use as a public house, or which is

currently unoccupied but was in use as a public house immediately prior to becoming unoccupied.

- All decisions relating to neighbourhood planning under Part 6 Localism Act 2011 in so far as they are non-executive functions and not reserved to full Council unless specifically delegated to officers by the Strategic Planning Committee.

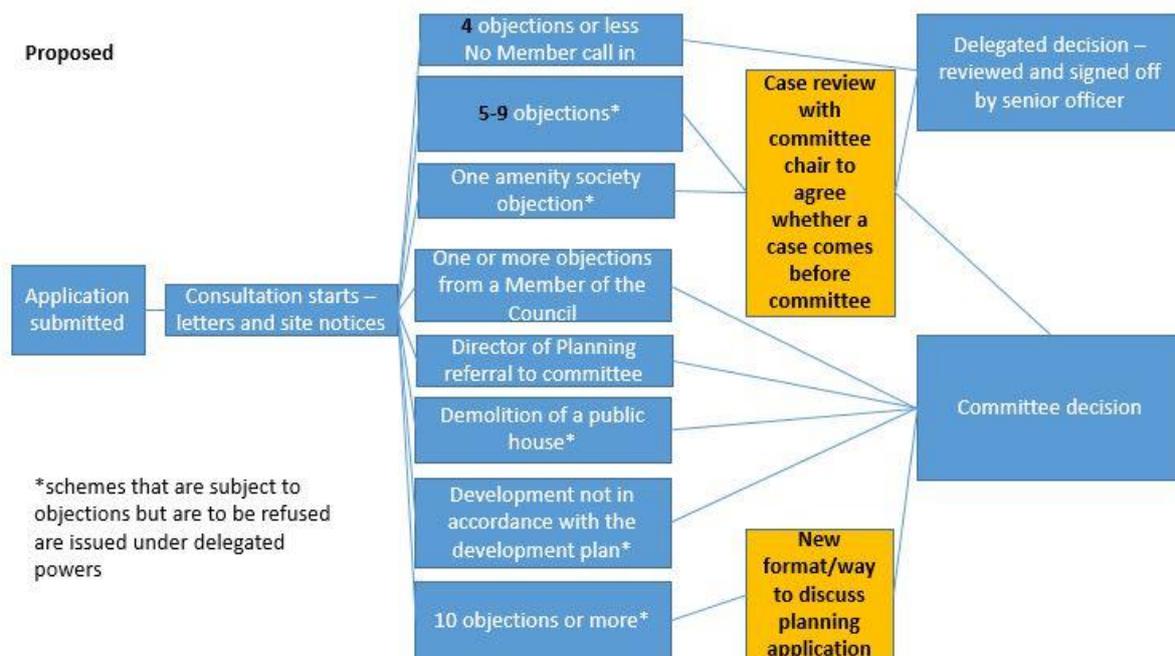
Diagram 1 illustrates the current process:

**Diagram 1 – Existing processes as set out in the SCI**



- 2.4. Since it has not been possible to hold planning committee meetings since March a backlog of around 40 planning applications requiring determination by committee has built up and continues to grow. The Government has brought in legislation to enable decision making to take place through virtual committee meetings and the Council has put in place measures to hold virtual planning committee meetings.
- 2.5. Taking planning applications to a planning committee for a decision is resource intensive. The current unprecedented situation has reduced the capacity of the Planning Department due to staff working from home with childcare responsibilities and staff volunteering to help out with frontline services to assist vulnerable groups in the community. Practice runs of virtual committee meetings have demonstrated that these are likely to take longer than physical meetings.
- 2.6. Planning guidance published on 13 May by the Ministry of Housing, Communities and Local Government (MHCLG) includes guidance on virtual planning committees and notes that “To ensure planning decisions continue to be made, local planning authorities should take advantage of .... powers to hold virtual planning committees – rather than deferring committee dates. They should also consider using ‘urgency powers’ within their constitutions to give senior officers delegated authority to make decisions.”

- 2.7. Lewisham currently has comparatively low thresholds for referral of items to committee meaning that proposals with very localised interest such as household extensions are frequently referred to planning committee. It is proposed to increase the threshold for referral of applications to planning committee from 3 to 5 objections. However an added safeguard will be introduced in the form of a case review with the committee chair when there has been an amenity society objection to agree whether a case should, still be referred to Committee. Applications which are recommended for refusal by officers would continue to be determined under delegated authority unless called in by a Councillor.
- 2.8. Officers considered a higher level than 5, such as 7 or 10. Key reasons for selecting 5 included that officers considered that a higher level, such as 12, was likely to be overly high for the current public health emergency and overly increase social contact as people would seek additional support from neighbours. Whilst Officers considered that a figure in the range of 5-10 was acceptable, on balance, as a matter of judgment, officers considered that increasing the level from 3 to 5 was considered proportionate in all the circumstances. However, it is proposed that cases which have a threshold of between 5 and 9 objections, would be subject to a case review with the committee chair.



### 3. Financial implications

- 3.1. There are no significant financial implications. As public meetings would be hosted online rather than physically there may be a small saving on venue hire expenditure.

### 4. Legal implications

- 4.1. Section 101 of the Local Government Act 1972 enables a local authority to arrange for the discharge its functions by a Committee or officer of the Council. The Council's Scheme of Delegation contained within its Constitution sets out how the Council has

decided to delegate the discharge its planning functions.

- 4.2. Those matters that are reserved to the Council's Planning Committees are set out in paragraph 2.3 of this Report. In addition the Council's Scheme of Delegation permits its Planning Committees to delegate such other functions as it may consider appropriate from time to time. Therefore the proposed changes set out in the Recommendations would fall within this power.
- 4.3. The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 4.4. In summary, the council must, in the exercise of its function, have due regard to the need to:
  - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
  - Advance equality of opportunity between people who share a protected characteristic and those who do not
  - Foster good relations between people who share a protected characteristic and persons who do not share it
- 4.5. The duty continues to be a "have regard duty", and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 4.6. The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:  
  
<https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>
- 4.7. The legal implications of making additions to the scheme of delegation to be effective immediately have also been taken into account. It is lawful to take decisions on the basis of the additions to the scheme of delegation (and a new SCI if approved by the Mayor and Cabinet on 10<sup>th</sup> June). It is recognised that residents or others may have made representations on the current applications in the backlog on the basis of the scheme of delegation. For example, this may have impacted how many people choose to write in to the Council. The legitimate expectation that decisions will be taken in accordance with the published scheme of delegation and its procedures is important. However, public authorities also have in principle a right to alter their policies or to depart from them in a particular case. Amenity societies have been informed of the proposed changes and been given an opportunity to make representations. A notice has also been published on the Council's website. Any comments received will be reported verbally. The circumstances of the public health emergency are pressing and

unique and justify changing the policy in the proportionate manner proposed, for a temporary period, with a review proposed. Further, case-by-case judgment is always applied in a planning decision and officers may recommend taking a particular application to committee if they consider it appropriate, including on the basis of a change in the scheme of delegation between consultation stage and officer report stage.

## **5. Equalities implications**

- 5.1. There are no anticipated equalities implications related to the changes to make additions to the scheme of delegation for a temporary period. The changes would mean that for some cases the decision maker would be a senior officer instead of a planning committee. However, each case would still be fully and properly considered on its merits. Equalities implications will continue to be addressed in all reports.

## **6. Conclusion**

- 6.1. Given the exceptional circumstances, officers recommend that for a period of 3 months, additional delegations to senior officers are agreed to help manage the growing backlog of planning applications:
- Threshold of objections for applications being required to go to Planning Committee for decision to be raised from 3 to 5
  - Any application with an amenity society objection to be subject to case review with Chair to determine whether it is referred to planning committee for a decision
  - Any application with 5-9 objections to be subject to case review with Chair to determine whether it is referred to planning committee for a decision
  - Above changes to working practices to be reviewed by the Strategic Planning Committee after a 3 month period following introduction.