

<b>Committee</b>	<b>STRATEGIC PLANNING COMMITTEE</b>	
<b>Report Title</b>	Temporary changes to the Scheme of Delegation - update	
<b>Ward</b>	Borough-wide	
<b>Contributors</b>	Emma Talbot	3 September 2020

## 1. Introduction

- 1.1. In response to the Covid-19 pandemic, emergency additions to the Council's Scheme of Delegation were agreed by Strategic Planning Committee on 9<sup>th</sup> June 2020 in order to enable the determination of planning applications. The additions to the scheme of delegation are (unless schemes are to be refused):
  - 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
- 1.2. It was agreed that the above changes to working practices would be reviewed by the Strategic Planning Committee after a 3 month period following introduction.
- 1.3. The additions to the scheme of delegation were accompanied by temporary changes to the Council's Statement of Community Involvement agreed on 10<sup>th</sup> June 2020. These are being reviewed on 16<sup>th</sup> September 2020.
- 1.4. The changes were agreed to enable the Council to deal with the growing backlog of planning applications requiring referral to planning committee that had not been able to be determined due to the cancellation of committees following 'lockdown'.
- 1.5. The changes to the scheme of delegation (and SCI) have been in operation since 24<sup>th</sup> June. During this time, those schemes with 3 or 4 objections (16 cases at the time of writing this report) have been decided under delegated powers, chair's review meetings have been held regularly to review those cases with between 5 and 9 objections or an objection from an amenity society and the Council has held meetings of committees A, B and C and Strategic Planning Committee. Committees have generally considered 2-3 cases per meeting and have required additional staff resource. The meetings have also largely taken in excess of 3 hours.
- 1.6. The Planning Service has reduced the backlog of committee planning decisions as a result of these measures, with committees currently programmed until October and a further 7 cases due for a chairs' review. The intake of new planning cases has been low during the height of the covid-19 pandemic which has assisted with caseloads, with numbers of cases now recovering week by week.
- 1.7. Whilst the pipeline of committee cases is currently at a manageable level, this is due to the measures that are currently in place. The Council is not currently in a position to resume in person committee meetings and although work is taking place to review options for hybrid meetings, this is considered unlikely to remove the additional workload for a virtual committee meeting.

- 1.8. The Council still has a statutory duty to determine planning applications submitted to it and it remains 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.
- 1.9. Given this, it is proposed that the temporary additional delegations are continued for a further 6 month period, at which point they will again be reviewed.

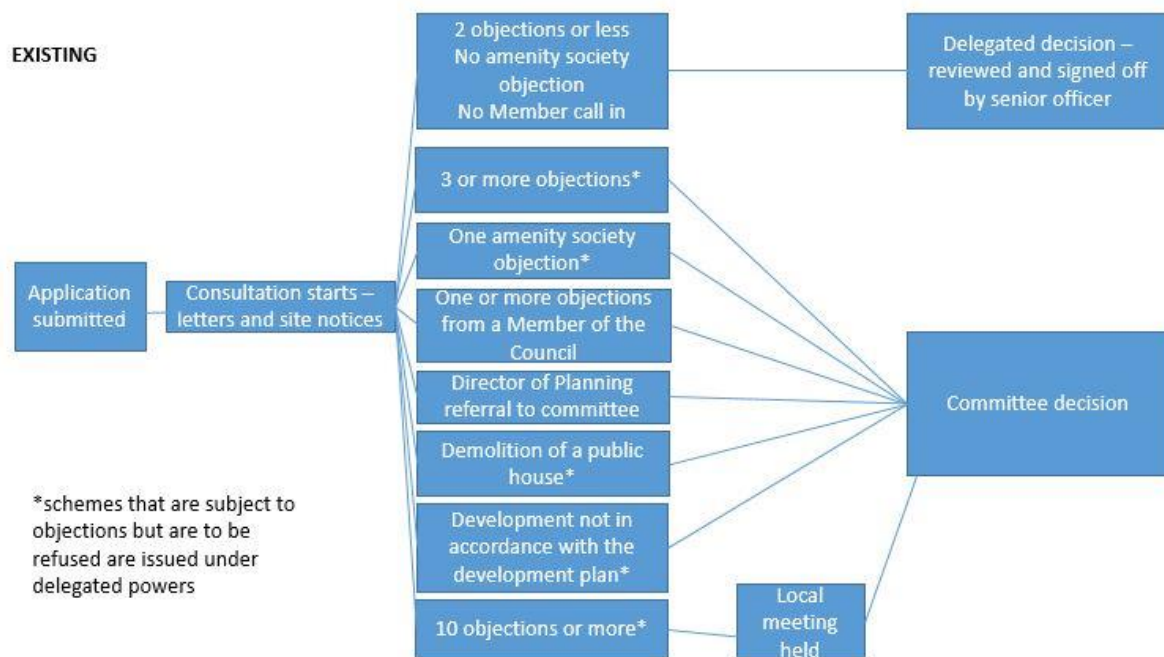
## 2. Recommendations

- 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 (unless the recommendation is for refusal):
    - 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 further 6 month period.
  - 2.2. The ongoing COVID-19 pandemic still means that in the interests of public safety and the need to ensure social distancing, it is not reasonably practicable to hold in-person meetings in public. This position has not altered since June and while lockdown measures have eased restrictions in some form are likely to persist for some time. The Council is under a statutory duty to determine planning applications submitted to it and the government continue to monitor Councils performance. It is still 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 remains one of the indicators which there is currently a requirement to report on.
  - 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 process as determined by the constitution

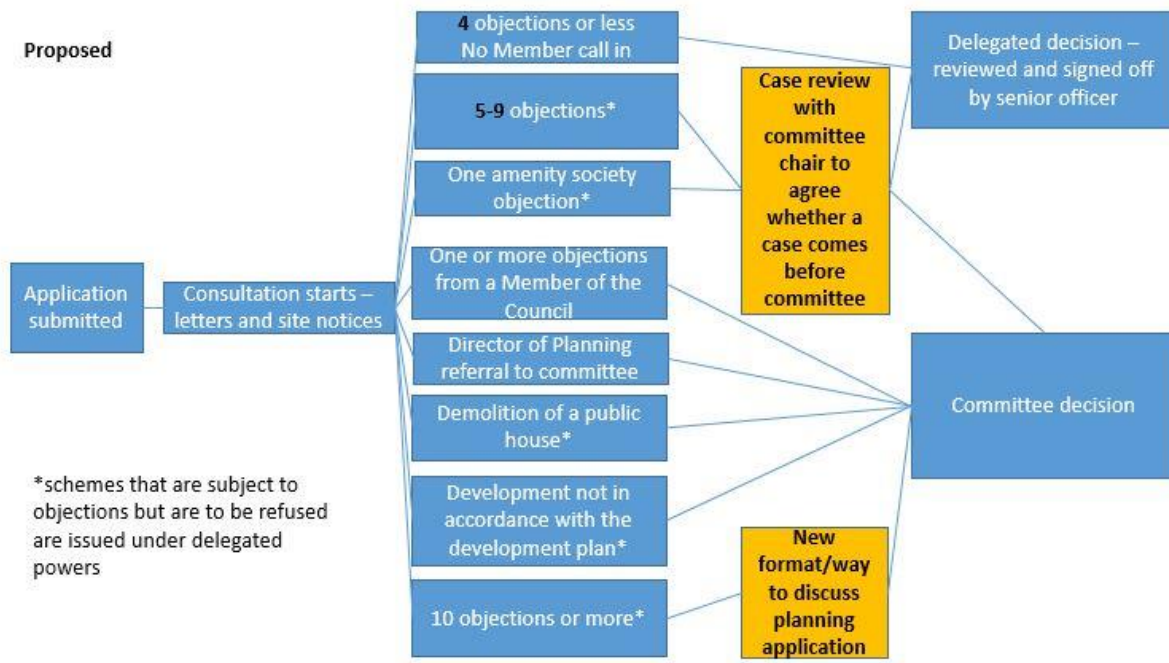
**Diagram 1 – Processes as set out in the SCI**



- 2.4. The Government brought in legislation to enable decision making to take place through virtual committee meetings and the Council now has measures in place to hold virtual planning committee meetings.
- 2.5. Taking planning applications to a planning committee for a decision is resource intensive. Officers have found virtual planning committees to be particularly resource intensive, requiring additional officers to be present and fully briefed on every scheme taken as back up, should technical difficulties be encountered. The meetings have taken longer than in person committees with additional preparatory work also required to ensure the public are able to fully participate by holding ‘test runs’ to support the public who wish to speak.
- 2.6. Planning guidance published on 13 May by the Ministry of Housing, Communities and Local Government (MHCLG) is still in force and includes guidance on virtual planning committees, noting 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 has temporarily increased the threshold for referral of applications to planning committee from 3 to 5 objections. However an added safeguard was 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. Cases which have a threshold of between 5 and 9 objections are subject to a case review with the committee chair.
- 2.9. At the time of writing this report, 26 case reviews had been undertaken on a range of schemes with between 5 and 9 objections or an amenity society objection. The Chair’s Review meetings do not take a decision on if the planning application itself should be approved or refused, only who will be the decision maker for the application, based on a short presentation of the scheme and an overview of the material planning considerations/key issues. So far, 17 cases have been delegated to officers with 6 cases sent on for a decision by committee. There are an additional 7 cases in the chairs review pipeline at present which, without the temporary delegations, would otherwise automatically require a decision by planning committee.
- 2.10. For those cases with 3 or 4 objections, 16 have been decided under delegated powers at the time of writing this report. Of those 16, 9 have been approved and 7 refused.



- 2.11. Officers consider that the temporary additional delegations are operating successfully. Good quality decisions are being made under delegated powers on the most straightforward cases, with the cases being considered by planning committee being more complex or nuanced. The temporary measures have enabled the

Planning Service to continue to issue decisions and reduce the backlog that had grown at the beginning of lockdown. Given the additional resourcing virtual meetings require and the length of time they are taking plus the increase in cases being received, the temporary measures are considered necessary to continue for a further period of 6 months. This would enable the Planning Service to continue to operate efficiently and the measures have not been found to give rise to concerns regarding the proper consideration of planning issues.

### 3. Financial implications

- 3.1. There are no significant financial implications. As public meetings are 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 were taken into account when these temporary measures were first introduced. It is lawful to take decisions on the basis of the additions to the scheme of delegation (and new SCI if extensions to that are approved by the Mayor and Cabinet on 16<sup>th</sup> September). It is recognised that residents or others may be anticipating that the temporary measures would end. 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 extension of these 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 continuing public health emergency are pressing and unique and justify changing the policy in the proportionate manner proposed, for a further temporary period. 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 continuing exceptional circumstances, officers recommend that for a further period of 6 months, additional delegations to senior officers are agreed:
- 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 6 month period.