

Report of	Meeting	Date
Director of Partnerships, Planning & Policy	Development Control Committee	4 September 2012

PROPOSED CHANGES TO THE CONSTITUTION & SCHEME OF DELEGATION – SECTION 73 APPLICATIONS

PURPOSE OF REPORT

- To seek appropriate changes to the Council's constitution and scheme of delegation in relation to the determination of section 73 applications.

RECOMMENDATION(S)

- That the Development Control Committee request and authorise the Council's Head of Governance to prepare a report to Full Council, detailing appropriate changes to the Council's constitution to achieve the objectives set out in this report.

EXECUTIVE SUMMARY OF REPORT

- The Executive Member for Planning has asked officers to review the scope of the constitution and scheme of delegation with regard to section 73 applications – these are applications more commonly known as those dealing with variations to conditions. It is considered that such applications may be more expediently dealt with under delegated powers.

Confidential report Please bold as appropriate	Yes	No

CORPORATE PRIORITIES

- This report relates to the following Strategic Objectives:

Strong Family Support		Education and Jobs	
Being Healthy		Pride in Quality Homes and Clean Neighbourhoods	
Safe Respectful Communities		Quality Community Services and Spaces	
Vibrant Local Economy		Thriving Town Centre, Local Attractions and Villages	
A Council that is a consistently Top Performing Organisation and Delivers Excellent Value for Money			X

BACKGROUND

- In 2009, the Government made changes to the planning system in response to the economic downturn, including the ability to extend the time limits of and make minor material

amendments to existing permissions, notably though the use of section 73 applications. Guidance on such matters is contained in the DCLG document *Greater Flexibility for Planning Permissions* October 2010).

6. Section 73 of the Town and Country Planning Act 1990 (as amended) allows applications to be made for permission to develop without complying with a condition(s) previously imposed on a planning permission. The local planning authority can grant such permission unconditionally, or apply different conditions, or they can refuse. The original planning permission continues to subsist whatever the outcome of the section 73 application. It is not permitted to use a section 73 application to extend the life of a permission if the time limit of the consent has already expired and no development has begun.
7. Section 73 applications are commonly referred to as “variations to conditions” and generally seek to change the original development in some way that is considered minor in nature. In many cases, such applications are for relatively minor matters e.g. a change of materials, variations to boundary treatments, landscaping schemes, etc, but they can also address changes to layout, changes to finished floor levels (FFLs), changes of house types, re-positioning of access roads, and changes to opening hours for example. If granted, a section 73 application will modify conditions attached to an existing planning permission where the principle of the development has already been determined.
8. Members will be aware that many factors influence the scope of the scheme of delegation, and an appropriate balance needs to be struck between transparency/openness and efficiency. Factors include:
 - the deployment of significant resources (production costs including officer time, printing costs, agenda processing, meeting time);
 - whether applications are in accordance with policy;
 - whether there are contrary comments to the officer recommendation, and the nature of those comments;
 - the need for and impact upon an applicant/agent/objector/supporter to attend or speak at the committee and the notification costs of informing such parties that an application is to be considered at a committee.

CURRENT POSITION

9. Under the terms of the current constitution and scheme of delegation, the power to determine section 73 applications lies with the Development Control Committee. Applications for major commercial, industrial and residential applications with certain size thresholds are expressly excluded from the scheme of delegation to officers if the officer recommendation is contrary to comments from either a local resident, a town or parish council or any other outside body or organisation that has been consulted; and for certain categories, applications may only be determined after consultation with the Chair and Vice Chair (Responsibility for Functions Appendix 2, pages 2 and 23-24).
10. Given this position, when a section 73 application is submitted for a “major” scheme, they are routinely reported to the Committee as they meet the size thresholds. Since the power was introduced in 2009, approximately 34 applications under section 73 (including minor material amendments) have been received, and approximately 23 were pursuant to major schemes, representing 68%.

PROPOSED CHANGES

11. It is considered that section 73 applications could be more efficiently determined after consultation with the Chair and Vice Chair of the committee. Members should note that under the current constitution, this would generally occur anyway if the officer is minded to

make a decision that is contrary to a written comment received from a local resident, a town or parish council, or any other outside body or organisation that has been consulted.

12. By amending the scheme of delegation to ensure all section 73 applications are only determined after consultation with the Chair and Vice Chair, then a more efficient determination could be made. Should the Chair and Vice Chair agree with the officer recommendation, the section 73 application could be determined under officer delegated powers.
13. Should the committee agree, such changes must be made by way of a report to Full Council, and the authority given to the Head of Governance to prepare such a report.

IMPLICATIONS OF REPORT

14. This report has implications in the following areas and the relevant Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	X	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE STATUTORY FINANCE OFFICER

15. The proposed changes will result in a more efficient determination of planning applications by the Council and should be welcomed.

COMMENTS OF THE MONITORING OFFICER

16. Such a delegation is desirable as this will allow for improved processing of minor, non-controversial requests. In the event that the Chair and/or Vice Chair are unhappy with any proposed change to conditions, they can decline to exercise the delegation and the matter can be referred to the Development Control Committee for their consideration.

LESLEY-ANN FENTON
DIRECTOR OF PLANNING, PARTNERSHIPS AND POLICY

Report Author	Ext	Date	Doc ID
Jennifer Moore Head of Planning	5571	24 August 2012	