

# REPORT TO CONSTITUTION AND ACCOUNTS COMMITTEE

**REPORT OF:** Chief Executive

**REPORT NO.:** CEX355

**DATE:** 16th October 2006

<b>TITLE:</b>	<b>Changes to Delegations Scheme and termination of the planning panel.</b>	
<b>COUNCIL AIMS/PORTFOLIO HOLDER NAME AND DESIGNATION:</b>	<b>N/A</b>	
<b>CORPORATE PRIORITY:</b>	<b>N/A</b>	
<b>CRIME AND DISORDER IMPLICATIONS:</b>	<b>None</b>	
<b>FREEDOM OF INFORMATION ACT IMPLICATIONS:</b>	<b>This report is available via the Local Democracy link on the council's website <a href="http://www.southkesteven.gov.uk">www.southkesteven.gov.uk</a></b>	
<b>INITIAL EQUALITY IMPACT ASSESSMENT</b>	<b>Carried out and appended to report?</b>  <b>Not Applicable</b>	<b>Full impact assessment required?</b>  <b>No</b>
<b>BACKGROUND PAPERS:</b>		

## 1. Introduction

In 2003 the Development Control Committee established a planning panel as a pilot. The panel has operated since then but has never been incorporated within the Council's constitution.

The purpose of this report is to regularise this position by terminating the pilot of the planning panel and amending the scheme of delegation.

## **2. Recommendations**

It is recommended to full Council that:

- a) the planning panel pilot be terminated.
- b) that the scheme of delegation to the Development Control Services Manager as set-out in pages 81 and 82 of the constitution be amended in accordance with Appendix A.
- c) the provisions of the constitution are clarified to ensure that no Committee established by the Council has the power to establish a panel for the purpose of advising officer on the exercise of authority delegated to them by Council.

## **3. Determination of Planning Applications**

Under the legislation there are only two ways that planning applications can be lawfully determined:

- a) By the Development Control Committee in accordance with the powers granted to this Committee by Council.
- b) By a designated officer of the Council in accordance with powers granted to that officer by Council.

It is vital that there is a clear understanding of the legal framework under which these powers are held. The Monitoring Officer covers this point more specifically in her comments. The key point to bear in mind is that any attempt to fetter the discretion of either the Committee, or the Officer, in the exercise of their delegated authority lays the Council open to legal challenge from anyone aggrieved at the outcome of a particular application.

A number of issues have arisen as a direct result of how the planning panel has operated in practice. These issues have been discussed with the members of the Development Control Committee. The problems that led to the creation of the panel have been fully explored and alternative means of addressing them identified. The additional resources in planning staff secured as a result of the re-structuring has assisted in this process. No member of the Development Control Committee expressed any objections to this proposal, however some members did favour an amendment to the proposed delegation scheme to grant Parish Council the right to require applications to be considered by the full Committee. This option had been discussed with staff in Development Control who expressed concern that it may lead to an unmanageably large number of cases coming before the Committee.

In view of the risks to the Council that emanate from the planning obligations of the authority, and the way that the panel has operated in practice, if the Council is minded to continue with the operation of the planning panel it will need to be fully integrated into the Council's constitution. I could only support such a course of action if it has been reviewed by a Counsel and deemed to be lawful. Even then, if the Council is to evidence high standards of corporate governance and transparency, meetings of the panel would have to be held in public.

#### **4. COMMENTS OF MONITORING OFFICER**

The Council as a Local Planning Authority may arrange for the discharge of its functions by a committee, sub-committee or an officer. By virtue of s.101(2) of the Local Government Act 1972, unless the Council otherwise directs, that committee may arrange for the discharge of those functions by a sub-committee or an officer. This Council has authority, by virtue of this provision, to direct how those functions should be discharged.

By virtue of the current scheme of delegations at part 3 of the Constitution, the Council has directed the functions to be delegated to the Development Control Services Manager. The Development Control Committee does not have authority to amend or in any fetter this delegation without an amendment to the Constitution by way of a recommendation from Constitution and Accounts Committee for a resolution of this Council.

The Development Control Committee established the planning panel, ostensibly, to reduce the number of planning applications being referred to the Development Control Committee and assist officer delegations. This can only be done in a way which does not amend the delegation to the officer or fetter the decisions made by the Development Control Manager under delegated powers. To mitigate the risk of challenge to decisions being made, the operation of the planning panel must be completely transparent and cannot in any way require the approval of the panel of members for a function which has been delegated to an officer. Whilst the operation of the planning panel does not propose the giving of approval or any amendment to officer delegation, it is difficult to see how that can be shown in practice without minutes of the meeting and public attendance. The planning panel as operating does not in any way mitigate but increases the risk of challenge. It adds another strand to the decision making process which is more open to challenge than the established processes of officer delegation or committee decision.

**Duncan Kerr**  
**Chief Executive**

## **Appendix A**

The existing paragraphs numbered 1 and 2 (a) to (j) of pages 81 to 83 of the Constitution shall be replaced with the following wording:

All decisions, responses or determinations arising in relation to applications, approval of reserved matters, prior approvals, consents and consultations, submitted to or received by the Council in accordance with all Town and Country Planning, Listed Building and related or associated legislation (including subordinate legislation and any consolidation, re-enactment or amendment thereto) shall be delegated to the Development Control Services Manager, except in the following situations:

- 1) Any application for planning permission which, in the opinion of the Authorised Officer is a departure from the Development Plan or an emerging replacement plan, and where the intended officer decision is permission/consent.
- 2) Any application for planning permission, approval of reserved matters, conservation area consent or listed building consent where a Member of the Council has requested in writing to the Development Control Manager that the application be considered by Committee. All requests shall be on the appropriate pro-forma and shall be submitted within three weeks of the circulation of details of the application

The request shall include a statement outlining material planning reasons why the proposal needs to be considered by Committee, accompanied by a list of related Development Plan or National Planning Policies. The Development Control Manager shall have the power to decline the request if in their opinion the reasons do not constitute material planning reasons.

All requests will be acknowledged in writing, and the reasons for the application being referred will be included in the officer report to the Development Control Committee.

- 3) Any application or consultation or like matter where the Authorised Officer considers a decision should be taken by Committee.
- 4) Any application submitted by or on behalf of a Councillor of the authority (or their spouse or partner) or by or on behalf of a member of the Council's staff (or their spouse or partner).
- 5) Any application submitted by or on behalf of the Council for its own developments, except for the approval of routine minor developments to which no objection has been received.
- 6) In those cases where statutory time limits are involved for making decisions or taking action, for example in cases of agricultural buildings, demolitions, telecommunications determinations and notifications of works to trees in

Conservation Areas, where non determination within a set period automatically gives consent; any objections received will be considered by the Authorised Officer and at their discretion efforts will be made to resolve the objection before the expiry period. However, the existence of the objection will not alter their authority in these instances to make a decision.