



Committee report

Committee	PLANNING COMMITTEE
Date	5 SEPTEMBER 2017
Title	PROPOSED CHANGES TO THE CODE OF PRACTICE FOR PLANNING MATTERS.
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INTRODUCTION

1. This report summarises recommended changes to the Code of Practice for Planning Matters and also provides clarification regarding the associated processes and seeks Members agreement to implement the proposed changes.
2. The reasons for these changes fall in to the following areas:
 - a) Recommended through PAS Peer Review outcomes – May 2016
 - b) Operational improvements, clarification, and efficiencies to improve service delivery
 - c) Changes arising from new and/or revised legislation, the structure of the Council, and the passage of time since the last review of the Code of Practice.
3. The Code of Practice for Planning Matters has not been updated significantly within the last 5years.
4. In developing the changes proposed, Officers have reviewed:
 - a) The findings of the PAS Peer Review (the recommendations of which were endorsed by the Planning Committee on – see <https://www.iwight.com/Meetings/committees/Planning%20Committee%20from%202013/13-6-16/minutes.pdf>)
 - b) The comments received from bodies such as the Planning Inspectorate and Local Government Ombudsmen raising the method of decision-taking
 - c) The practices of other Local Planning Authorities
 - d) Matters arising from the determination of applications cases within the last 2years including those reported to the Planning Committee.

5. Planning decisions must be taken in accordance with the Development Plan unless material considerations indicate otherwise – see s38(6) of the Act, and this legislation also provides a requirement for consultation as part of the application process. These requirements provide for a system which is open, transparent accountable and fair.
6. The Secretary of State is able to identify and designate poor performing Local Planning Authorities, placing emphasis on the need to determine applications efficiently whilst maintaining high quality standards. The Council must therefore have an appropriate delegation process in place in order to ensure these objectives are met.
7. The majority of applications (over 90%) are dealt with under Delegated Powers, with the remaining percentage being determined by the Planning Committee, in accordance with the current Code of Practice.
8. The structure of the Council and specifically the Planning Service has changed over recent years owing to the wider financial position of the Council and this further supports the need for a review of processes and associated documentation.
9. The proposed changes seek to ensure that effective and accountable planning decisions are made, with those decisions being taken at the most appropriate level. The changes to the process will ensure a robust process for the determination of most applications under Delegated Powers, whilst ensuring that those applications which genuinely require Planning Committee consideration reflect the purposes for which the Planning Committee is established which is to:
 - (a) *Determine those issues which have a genuine Island wide significance due to their size or impact;*
 - (b) *Raise marginal and difficult policy issues (including inconsistency between policies);*
 - (c) *Determine applications which are made for commercial or potentially contentious purposes by elected members or officers (or their spouses); or are contentious among the wider island communities.*

PROPOSED CHANGES:

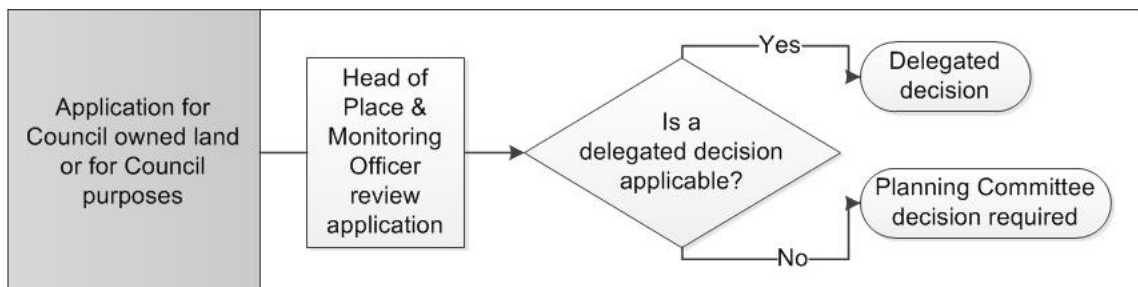
10. The revised Code of Practice is attached at Appendix B. The changes do not seek to fundamentally alter the ability for delegated decisions to be made, or for items to be reported to the Planning Committee for determination, or remove the ability for Members to “call-in” applications, but do seek to revise and clarify the processes by which these actions are undertaken.
11. The PAS review highlighted the extensive constitution and code of conduct arrangements which presently exists and the benefits this has to decision-taking, these changes seek to reinforce and improve these arrangements.
12. It remains the case that the majority of applications will continue to be dealt with under delegated powers. This is reflective of the overall number of applications received by the Local Planning Authority, the range of application types received and the complexity of those cases and enables the Council to ensure business

efficiency and compliance with required regulations related to the performance of planning authorities (and criteria for designation as set out within Town & Country Planning Act 1990).

13. The changes would not alter any formal consultation processes which are set out within legislation. Elected members may currently engage with the Case Officer for an application during the application process and are encouraged to do so to aid in the efficient determination of applications and resolution of issues, and the proposed changes would reinforce this approach.
14. The changes and alterations to processes are broken down into the following sub-headings:

Council owned land or property:

15. The changes proposed would ensure that accountability and transparency would be preserved, whilst allowing the ability for some proposals to be determined under Delegated Powers subject to the agreement of the Head of Place and the Monitoring Officer. This process would follow the completion of the recommendation and the involvement of the Local Ward Member (as necessary):



16. This would allow improvements to efficiency of decision taking in respect of these applications, which may in turn have additional positive effects to the Council in fulfilling its other duties and responsibilities.

Prior approvals / notifications:

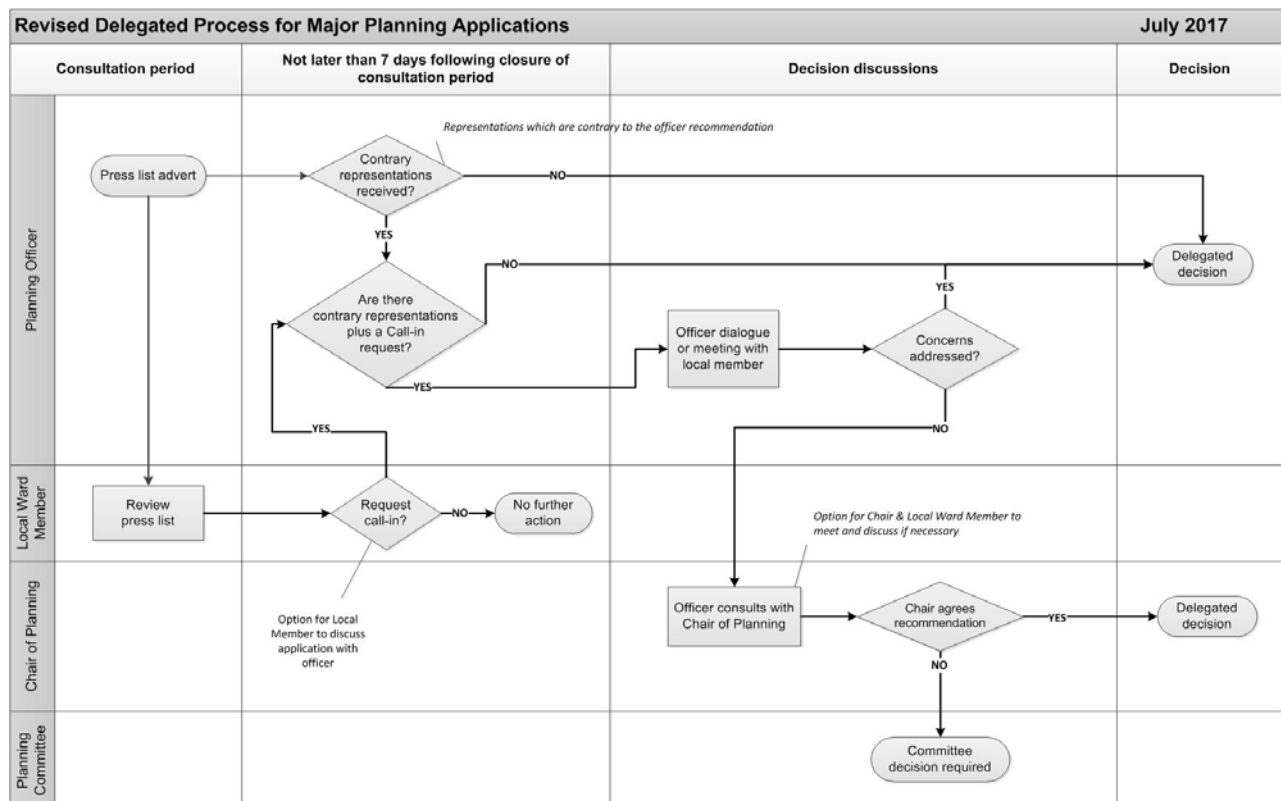
17. Changes are proposed to remove the ability for “Prior Approvals” to be determined by the Planning Committee with all of these types of application being determined under Delegated Powers.
18. This is because Prior approvals are subject to defined timescales as set out within the legislation, these may either be 28 days or 56 days and there are also defined processes for consultation. In the event that a decision is not issued within these statutory timescales, the effect is that deemed consent is granted.
19. Due to statutory timescales and the timetable for Planning Committee it is not possible to report these items to the committee without the risk of deemed consent being granted. This is the approach taken by a number of local authorities.

Certificates of Lawful Use or Development:

20. Changes are also proposed to remove the ability for Certificates of Lawful Use or Development (existing or proposed) - commonly known as Lawful Development Certificates (LDCs) - to be determined by the Planning Committee with all of these types of application being determined under Delegated Powers.
21. Lawful Development Certificates (LDCs) are considered against clearly defined legislation and can require complex determination on law and facts. The decisions in respect of compliance with the law are to be left to the professional assessment of Officers (including Legal Services where necessary) taking into consideration the legislation, common law position (and any technical guidance issued by Government), and Appeal decisions. This is common practice in other authorities and therefore this is an accepted method of determination.

Delegated Decisions - Major applications

22. For major applications (as defined by the Town & Country Planning Development Management Order 2015 – *being 10+ dwellings or where the site is greater than 0.5hectares if the number of dwellings proposed is unspecified; or 1000m2 of commercial floorspace; or a site greater than 1hectare in area*), the process for determination of the decision would be as set out over the page:



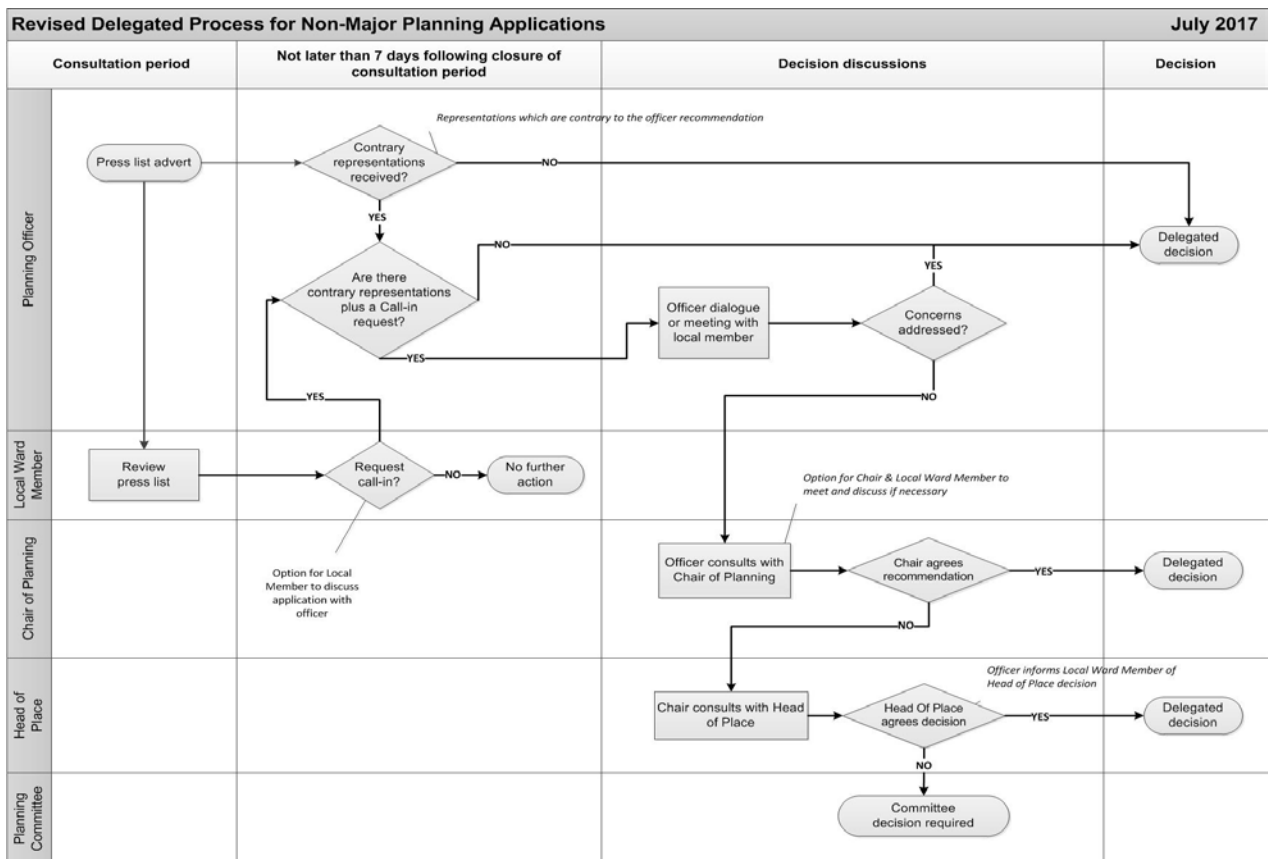
23. This process provides for a call-in request to be made by the Local Ward Member, and considered where representations contrary to the officer recommendation have been received. If the call-in request cannot be addressed through dialogue between Officers and the Local Ward Member, this request will then be discussed

with the Chairman. If the Chairman is in agreement with the request, the item will be reported to the Planning Committee.

24. This change in process would allow some decisions on major schemes to continue to be made under delegated powers (as they currently are) whilst retaining the ability for those more complex or sensitive proposals to be determined by the Planning Committee. This also ensures that the Planning Committee are determining those applications which reflect the purposes that the Planning Committee is established.

Delegated Decisions – All other applications

25. For all other applications (with the exception of those covered within the previous sections of this report), the process would be as set out below:



26. This process provides for a call-in request to be made by the Local Ward Member, and considered where representations contrary to the officer recommendation have been received. If the call-in request cannot be addressed through dialogue between Officers and the Local Ward Member, this request will then be discussed with the Chairman. If the Chairman is in agreement with the request, a further discussion between the Chairman and the Head of Place will determine the method of decision-taking. If the Chairman and Head of Place agree with the request the application will be considered by committee. If the Chairman and the Head of Place disagree over the request the application will be considered by committee.

27. These changes would enable the current level of service delivery and performance to be maintained (and improved) whilst also ensuring that there is appropriate accountability and clarity of process. These changes would enable professional planning judgements to be made, with appropriate safeguards in place to ensure that the decision is made at the correct level.

Delegated Decisions – General process comments

28. Members will note that in terms of the operation of the Delegated Decision processes there will be a distinct change from that currently and historically operated. Whilst the “Part 1A” (no representations received within consultation period contrary to the recommendation) arrangements would remain, the “Part 1B” process would change.
29. All applications are publicised on the weekly press-list, a copy of which is emailed to all members and which is also retained on the Councils website. From this list Members are able to view the applications being advertised in their ward. The onus on Members would be then to review the press-list.
30. Members can, at any time following publication, contact the Case Officer (identified on the list) to discuss any particular points they would wish to raise, or advise of any concerns.
31. Members would have the consultation period and a further 7days to request an item is “called-in”, and give their material planning reasons for such a request. **The Local Planning Authority would no longer write to the Local Ward Member.** The responsibility for making a request, within the requisite time period and based upon material planning reasons would therefore rest with the Local Ward Member. It is anticipated that this would be likely to be influenced not only by their awareness of the application on the press-list, but from correspondence or dialogue from those within the community or those with an interest in the application.
32. Where such a request is made and the application receives representations contrary to the officer recommendation proposed, the process does have sufficient procedures in place to enable further discussion between the Local Member and Officers, including with the Chair of Planning as necessary, in order to discuss particular concerns and attempt to address issues prior to the resolution being finalised.
33. The changes to the delegated process would enable concerns of Members to be raised earlier within the timeline of the application (allowing the Council to maintain its performance requirements) whilst also improving the levels of dialogue between Members and Officers.

Member training:

34. The proposals also seek to highlight and reinforce the importance of Member training. This is in direct response to the outcomes of the PAS and Scrutiny reviews. It is important to ensure that Members have an up-to-date and appropriate working knowledge of the planning system, which often includes changes in policy and legislation. The introduction of this system would be to the

benefit of the Council in ensuring quality decision making, maintaining public confidence in the planning system and potentially preventing the Council from taking decisions which may result in costs awards at Appeal. It will also improve Members understanding of all aspects of the planning system, including changes to legislation, enabling them to fulfil their varying roles and responsibilities to their community, and the wider Island.

IMPACT OF THE PROPOSED CHANGES:

35. Underpinning the changes is a desire to ensure a fair, transparent and accountable system, whilst maintaining existing performance standards and allowing opportunities for improvement within the resources available. Above all, the process changes will continue to ensure that good outcomes are achieved taking into consideration the development plan, material considerations and the views of local communities/stakeholders.
36. Collectively the proposed changes have the potential to reduce the number of applications reported to the Planning Committee. This could result in the process being perceived to be lacking in transparency or undemocratic. However, the changes as outlined would provide a clear process for the determination as to whether an item is or is/not reported to the Planning Committee and provides a clear system for accountability. None of the changes impact upon the consultation required for applications.
37. All planning decisions are accountable, with the decision being able to be challenged by judicial review or Appeal to the Planning Inspectorate (in the event of refusal) and these measures are supplemented by the existing regimes in respect of the Councils complaints procedure and the Local Government Ombudsman (LGO). In the event that the Local Planning Authority was making “incorrect” decisions, this would be reflected in the outcomes of post-decision analysis and within statistics in respect of Appeals and complaints which are reported as part of the local planning authorities Annual Monitoring report.
38. In the event these changes further reduce the number of applications reported to Planning Committee, this would have consequential benefits through the reduction in the number or length of meetings which has the potential to have financial benefits (reducing costs) whilst also improving the quality of the decision making process by allowing the Planning Committee to ensure that all items are heard and ensure that the most significant applications are fully considered and discussed. Thus it is considered that the changes would have potential positive effects in respect of the way the Planning Committee operates. This is particularly important given the Councils Regeneration and Growth objectives.
39. It is also considered that the proposed changes would have a positive benefit in terms of the appearance of the Council to be efficient and “open for business”, with the Planning Committee empowering Officers within the Planning Service to make efficient and effective planning decisions based on professional planning judgements. The system would provide a robust and clear basis for this to occur and this would have potential benefits in respect of attracting business and development to the Island, with an efficient Planning Service not being seen to be a barrier to inward investment.

RECOMMENDATION

1. To adopt revised Code of Practice as set out in Appendix B
2. To delegate to the Head of Place in consultation with the Cabinet member for Planning and Housing and the Chair of Planning the implementation of the changes to processes as required by the changes set out in Appendix B and as summarised within this report.

WENDY PERERA
Head of Place

[Appendix A](#) – Planning Advisory Service Peer Review Report – March 2016
[Appendix B](#) - Updated Code of Practice – September 2017