

PART 3 SCHEME OF DELEGATION – COUNCIL FUNCTIONS – DEVELOPMENT CONTROL COMMITTEE

FULL COUNCIL



DATE	17th April 2024
PORTFOLIO	Leader
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PURPOSE

1. To consider the removal of Part 3 of the Scheme of Delegation, 1. Council Functions, a) Development Control Committee which requires planning decisions which are substantially contrary to the Local Plan to be referred to Full Council and replacing it with an alternative provision.

RECOMMENDATION

2. That Full Council approves the removal of the provision from Part 3 of the Scheme of Delegation, Council Functions, a) Development Control Committee which requires Development Control decisions which are substantially contrary to the Local Plan to be referred to Full Council. The provision is set out in full at paragraph 10.
3. That Full Council approves an alternative provision which shall be inserted into Part 1.
 - a) On a planning matter where the Head of Housing and Development Control/Legal Officer has advised before the vote is taken that the decision that the Development Control Committee is minded to take would represent:
 - (a) decisions which would be substantially contrary to Burnley's Local Plan or any clearly stated Council policy; or
 - (b) decisions which would give rise to substantial claims for compensationthe vote taken by Development Control Committee will not be effective, and the matter will be deferred until the next meeting of Development Control Committee so that the planning decision can be referred to the Head of Legal and Democratic Services for her to provide legal advice on the matter which will be presented to the Committee at its next meeting.

REASONS FOR RECOMMENDATION

4. Group Leaders requested that a report on the efficacy of the referral provision to Full Council be presented to Member Structures and Support Working Group on 4th April 2024. This request was received prior to the two latest planning applications relating to Heckenhurst Avenue and land south of Rossendale Road being referred to Full Council under the referral provision.

5. On the last two occasions when the referral provision to Full Council has been exercised, Full Council has not made a determination to approve or refuse and has either not made a decision or referred it back to Development Control Committee. Rather than expediting decision making, the referral process has instead led to lengthy delays and put the Council at risk of losing the appeals for non-determination and/or significant costs awards.
6. On a referral to Full Council extra measures have to be taken. For example, all elected members need to have undertaken development control training to be able to participate in the debate, and the CPRs which relate to Full Council meetings do not readily lend themselves to how planning applications are usually presented. Whilst the current provision does not appear to work well, it is recommended that there still is a safeguard or cooling off period in place to ensure sound decision-making, hence the recommendation set out in paragraph 3.
7. Under the Special Measures programme, Councils can have the responsibility for determining planning decisions taken out of their hands and dealt with instead by the Planning Inspectorate, if they fall below specified thresholds for the speed and quality of their decision making. The Council should not go over 10% of decisions overturned at appeal.
8. Should the Council be placed in special measures, this would lead to a loss of income, influence and control over the developments that take place in the borough; reputational risk for sound decision making and a risk to recruitment and retention, which is already very challenging.
9. Research was conducted into arrangements at other local authorities in Lancashire, the results of which are appended to this report (Appendix 1). No other authority in the county has a referral to Full Council provision in its constitution.
10. Part 3 currently reads as follows;

On a planning matter where the Head of Housing and Development Control/Legal Officer has advised before the vote is taken that the decision that the Development Control Committee is minded to take would represent: (a) decisions which would be substantially contrary to Burnley's Local Plan or any clearly stated Council policy; or (b) decisions which would give rise to substantial claims for compensation And the Head of Legal and Democratic Services (having also consulted the Chairman (or in his or her absence the Vice Chairman) of the Development Control Committee) has confirmed in writing that he/she agrees with the view no later than 5 working days after the day of the relevant Development Control Committee whether it is a decision relating to enforcement action or the determination of a planning application, then the matter will be determined by Full Council.

SUMMARY OF KEY POINTS

11. The two previous applications where the referral to Full Council was used as follows. The deferral of FUL/2022/0149 Hollins Cross Farm, Woodplumpton Road, Burnley by Development Control Committee on 8th December 2022 and 18th January 2023, and the subsequent refusal by the committee on 9th March 2023, led to the provision being

exercised. The special Full Council meeting held on 7th June 2023 failed to make a determination on the application. Consequently, the applicant appealed to the Secretary of State for the Department of Levelling Up, Housing and Communities on the grounds of non-determination. The appeal was allowed and the application granted with Conditions as outlined in the recent appeal decision (7th December 2023).

12. The referral provision was previously exercised in relation to APP/2019/0155 Land to the West of Red Lees Road, Cliviger, Burnley. This application was originally considered at the Development Control Committee meeting on 21st August 2019 and was refused and was therefore referred to Full Council on 16th October 2019. At that meeting the application was again deferred to an Extraordinary meeting of Full Council held on 16th December 2019. At that meeting, as the original application had been amended by the applicant, Full Council referred the matter back to the Development Control Committee meeting held on 9th January 2020. At that meeting authority was delegated to the Head of Housing and Development Control to approve the development subject to notification from the Secretary of State that they would not intervene in the decision and the completion of a S106 Agreement to secure contributions towards education provision and affordable housing and to conditions.
13. Consultation with the Head of Housing and Development Control and Planning Officers has come up with the recommendation at paragraph 3. This will enable planning decisions to remain with Development Control Committee, but provide for a cooling off period to enable additional legal advice to be obtained on the planning decision before the final determination is made.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

14. None.

POLICY IMPLICATIONS

15. n/a

DETAILS OF CONSULTATION

16. Member Structures and Support Working Group.

BACKGROUND PAPERS

17. The Council's Constitution. Minutes of previous Development Control and Full Council meetings, along with the appeal decision as referenced in the report. Planning Advisory Service Probity in Planning Guidance. Planning Application Process: Section 62A Authorities in Special Measures (www.gov.uk).

FURTHER INFORMATION
PLEASE CONTACT: Carol Eddleston, CJ 01282 475973.
Walmsley
ALSO: