

NAME OF SCRUTINY COMMITTEE	COMMUNITIES SCRUTINY COMMITTEE
DATE OF MEETING	4 APRIL 2019
TITLE	PLANNING MATTERS AND THE DELEGATION SCHEME
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CABINET MEMBER	COUNCILLOR DAFYDD MEURIG
PURPOSE	TO EXPLAIN THE REQUIREMENTS WITH PLANNING APPLICATIONS TO VARY CONDITIONS AND THE IMPLEMENTATION OF THE DELEGATION SCHEME

1. BACKGROUND

1.1 An initial discussion on this matter was held at the Scrutiny Committee meeting held on 13 December 2018, where a report was submitted by the Head of Environment Department regarding the implementation of the Planning Delegation Scheme in the context of Plas Pistyll, Pistyll, Pwllheli. The Committee resolved to defer the matter and to receive a further report which would address the proposal accepted by the Chair, namely:

"The Chair accepted the proposal which was seconded to request a further report on the Delegation Scheme which would consider the basic matters, the thresholds for receiving an application to vary conditions, the thresholds of the delegation scheme, to be submitted before the next Committee. It was suggested that the Head of Environment Department, the Cabinet Member for the Environment and the Head of Legal Services provide a joint report which would respond to the Members' observations as well as consider the information and evidence submitted to the Committee."

1.2 More recently, a joint report by the Head of Environment Department and the Head of Legal Services / Monitoring Officer was submitted to a Scrutiny Committee meeting held on 7 February 2019, in order to try to address the above decision made by the Scrutiny Committee at the meeting on 13 December 2018. The Committee's decision was to:

- **to defer the matter to the next meeting**
- **that an informal meeting is held between the Chairman, Councillor Seimon Glyn, Councillor Aled Wyn Jones, Councillor Gruffydd Williams, Councillor Dafydd Meurig (Cabinet Member - Environment) and the relevant officers to agree on the matters that need addressing in the report that will be submitted to the meeting on 4 April 2019.**

1.3 The informal meeting was held on 20 February 2019 between the above Members and the relevant officers which included Dafydd Wyn Williams (Head of Environment Department), Gareth Jones (Senior Planning and Environment Manager), Iwan Evans (Head of Legal Services / Monitoring Officer) and Rhun ap Gareth (Senior Solicitor) Gareth James (Member Support and Scrutiny Manager) and Lowri Haf Evans (Member Support Officer).

1.4 Therefore, this report is submitted in an attempt to address the matters discussed at the informal meeting on 20 February 2019, and also to address the two main matters stemming from the decision made at the meeting on 13 December 2018, as these were not discussed at the meeting on 7 February 2019. The two matters are:

- The thresholds for receiving an application to vary conditions
- The thresholds in the planning delegation scheme

2. MATTERS ARISING FROM THE INFORMAL MEETING OF 20 FEBRUARY 2019

2.1 Very constructive discussions were held at the meeting on 20 February 2019 with an opportunity to consider the evidence and opinions of members on the matter together with the evidence and opinions of officers (namely the information submitted in reports to the Scrutiny Committees held on 13 December 2018 and 7 February 2019). The discussion focussed mainly on the following matters:

- consider whether there were opportunities to investigate potential options in terms of how the Planning Service held public consultations on planning applications, particularly on applications to vary conditions, although noting that the Service already went above and beyond the statutory requirement.
- consider the consultation arrangements on planning applications in or near the Area of Outstanding Natural Beauty (AONB) in terms of the AONB Service and the AONB Joint-committee, where this is reasonable and appropriate and having regard to the statutory requirements for consultation and for making decisions on planning applications.
- with reference to the Training held for all Members on 20 February 2019 which mainly focused on the role of every Member in the planning process, and following positive feedback from the Members who attended, it was agreed that it is important to continue to hold regular training sessions for every Member and that every Member should give priority to attending the sessions.

2.2 In addition to the above, it is noted that there was a discussion regarding including further information in this report regarding how a decision was reached on planning applications involving Plas Pistyll. The officers' opinion on this was that the relevant information had been included in the report to the Scrutiny Committee held on 13 December 2018.

2.3 A draft version of this report was shared with the Members after the meeting to ensure that it provided the necessary explanation of the discussions. No request was received to amend the report.

3. APPLICATION TO VARY PLANNING CONDITIONS

3.1 The planning legislation refers to different types of planning applications which may be submitted in order to apply for planning permission, which include a full application, an outline application and an application to vary or delete a condition/conditions on existing planning permissions.

- 3.2 With a development which has been granted planning permission which is still a live permission, if a developer needs to change parts of the development, there are various options available which depend on what is in question. It is possible to make minor non-material alterations through a simple procedure under section 96A of the Town and Country Planning Act 1990. Other alterations may be made through a procedure under section 73 of the act, to vary or delete planning conditions, or an application may be made for an entirely new permission of course.
- 3.3 The procedure under section 73 of the Town and Country Planning Act 1990 has been created to facilitate processes and avoid a stringent procedure under applications for full permission, where it is considered that fundamental alterations are not made. The procedure allows developers to make applications to modify conditions (including specific plans) on a specific permission.
- 3.4 The planning authority is required to consider the propriety of such an application in every case, but specifically consideration needs to be given to whether the modification involves a fundamental alteration to the original plan. These legal grounds can be found in the case of *R v Coventry City Council (ex parte Arrowsmith Group plc)* (2001). A fundamental alteration means transforming the effects of the development in its entirety. However, it is possible to use this process in order to reduce the scale of a development.
- 3.5 If it is considered that the alteration to a permission is fundamental, the applicant will be required to submit a new full application.
- 3.6 A recent High Court case has made things a little clearer in terms of what is possible under section 73. In the case of *R (Vue Entertainment Limited) v City of York Council* (2017), the national cinema company, Vue, made an application for a judicial review of York Council's decision to approve a modification to a permission under section 73. The application increased (amongst other things) the number of cinema screens from 12 to 13, and increased the seating capacity within the cinema from 2000 to 2400. This was a 20% increase in numbers. The Vue company argued that this was a fundamental alteration to the original permission. However, the Court decided in this case that this was not a fundamental alteration, and that the permission in its entirety needed to be looked at when considering the question. The alteration to the condition did not involve altering the permission in its entirety. The permission description referred to a "multi-screen cinema" and the alteration in question would still mean that the description on the permission remained the same.
- 3.7 The case gives strong support to the argument that developers may use section 73 to vary conditions which are beyond minor alterations. It is a matter for the planning authority, through its officers, to consider the propriety of the type of applications in every individual case. However, the planning authority may not insist upon a full application when an applicant makes an appropriate application under section 73. It is noted that planning officers have to make decisions which involve the need to assess the type of application that is appropriate, as an integral part of their everyday work.

- 3.8 In terms of the planning history of the Plas Pistyll site specifically, the concern regarding the propriety of the type of application submitted is raised in the context of a planning application to vary conditions, namely application no. C16/0976/43/LL which was for:

"Vary conditions 2 (in accordance with plans) and 7 (number of units) on planning permission C11/0661/43/LL in order to amend the development design and reduce the number of holiday units to 19, together with the deletion of conditions 8, 9, 10 (Code for Sustainable Homes)"

- 3.9 It is noted that the above application remains an application which involved providing holiday units in accordance with the original planning application, but that the application reduced the number of holiday units. Therefore, varying the conditions did not alter the permission in its entirety. The effect of altering the conditions was changing the design which was a material alteration which required planning permission, and an application to vary conditions was submitted to this end. It is also noted that that all the changes were within the same red line shown for the original application. Therefore, considering this application from a legal perspective, it is believed that submitting an application to vary conditions was appropriate in this case.

4. PLANNING DELEGATION SCHEME

- 4.1 In accordance with the provision of the Local Government Act 1972, Section 101, the Council is permitted to delegate its functions to Committees, Joint-Committees, Sub-Committees and Officers. There are also provisions for delegation functions by the Cabinet. However, determining planning applications is not a Cabinet matter and, therefore, the delegation procedure comes via the Full Council.
- 4.2 Clarity regarding who has the right to determine applications is crucial in order to give assurance to applicants and objectors regarding the decision. Consequently, there is a specific and detailed delegation scheme regarding planning applications.
- 4.3 The delegation scheme was revised in May 2018 after a scrutiny investigation and the Scrutiny report submitted for approval by the Full Council is appended. The objective of the report was to adapt the procedure in order to strike an appropriate balance regarding the matters which had to be submitted before the Committee. One of the main changes from this respect, was to shift the emphasis from referring to the Committee as a result of a comparatively low and quantitative number of objections, which increased the work of the Committee despite the nature of the applications being comparatively straight-forward. Therefore, specific emphasis was placed on the role of local members and wider as the barometer of local opinion and to use their right to call in if there was genuine local concern.
- 4.4 In relation to Plas Pistyll, Scrutiny Committee Members have questioned why application no. C16/0976/43/LL to vary planning conditions (see paragraph 10) was not reported to the Planning Committee. This application for Plas Pistyll was determined in accordance with the previous procedure. However, in the absence of a request to call in by a member and the fact that there were no objections, none of the thresholds for determining an application to vary conditions was crossed. Given the response to the public consultations and the history of planning permissions for holiday units on the site, there were reasonable grounds for the Head of Department to decide not to use his right to refer the application to the Planning Committee.

4.5 To support this procedure in its current and past forms, the following steps were taken to draw attention to the application:

	Consultee	Method of consulting on a planning application	When?
1	Neighbours	Letter by post - Appendix 2 (which includes a link to the application)	In circumstances where there is an adjoining owner or occupier (this happens in the majority of applications and based on the nature and circumstances of the development/site).
2	Site	Site notice - Appendix 3	Always
3	The press	In the local press (depending on the area - Caernarfon & Denbigh / Bangor Mail / Cambrian News) - Appendix 4	e.g. Conservation Area applications, Listed Buildings applications, major applications, applications which are subject to an Environmental Assessment etc. where the Order insists upon an advert in the press.
4	Local Member	Via e-mail - Appendix 5 (which includes a link to the application)	Always
5	Community Council	Via e-mail - Appendix 6 (which includes a link to the application)	Always
6	Statutory Consultees	Via e-mail - Appendix 6 (which includes a link to the application)	When relevant to the development
7	Others	Via e-mail or letter	When relevant to the development

4.6 Publicity for applications for planning permission (with the exception of some applications which come in under Section 73) must be given in accordance with schedule 12 of the Town and Country Planning Order (General Development Procedure) (Wales) (Amendment) 2012. The Order provides for four basic types of publicity:

- i. The display of a site notice on or near the land to which the application relates
- ii. Publishing an advert in a newspaper circulated in the neighbourhood
- iii. Serving a notice on any adjoining owner or occupier
- iv. Publishing information on the website of the Local Planning Authority (LPA)

4.7 With the majority of planning applications received by the LPA, there is a statutory requirement to publicise applications for planning permission by:

- i. displaying a site notice in at least one place on or near the land to which the application relates for no fewer than 21days;
or
- ii. by serving the notice on any adjoining owner or occupier.

- 4.8 In some circumstances, there may also be a requirement to advertise the application in the local press (see the above table). Following the discussions between Members and Officers at the meeting of 20 February 2019, potential options in terms of including the Local Member, Community / Town Councils, neighbours etc. in consultation letters may be examined. This could first of all be looked at in the context of an application to vary or delete a condition but consideration could also be given to looking at this for all types of planning applications. Whilst it is noted that the discussions were around consultation, it is possible to consider where relevant, The National Principles for Engagement in Wales (2011), when looking at options in relation to the content of consultation letters. Of course, this will all need to be considered in the context of the statutory requirements in relation to consulting on planning applications and on what is practical.
- 4.9 The current consultation procedure was stressed when submitting the report about the new Delegation Scheme to the Full Council, namely that there would be a reliance on local members to be alive to planning matters in their areas and to keep in touch with the Planning Service. This procedure has been operational for some time with experienced and new members referring matters to the Committee. Statistics show that approximately 11% of the applications reported to the Committee under the old delegation scheme had been referred by Local Members, with seven applications referred by Local Members since the implementation of the new Delegation Scheme. This is in addition to the procedure for notifying neighbours and Community Councils, which is not only a way of seeking feedback but is also a part of the procedure of advertising and raising awareness about applications.
- 4.10 Therefore, according to the delegation scheme, permission is given to the Head of Environment Department, operating via his planning officers, to determine every planning application with the exception of those which fall within the categories which have to be submitted before the Committee. There is discretion to send applications that do not cross these thresholds to Committee in any case. But, this is a discretion and does not withdraw the core rights. Therefore, a decision which is in accordance with the Delegation Scheme is a valid planning decision. This is required in order to give assurances regarding such decisions and that it does not open the door to a challenge.
- 4.11 If a question arises regarding adapting the Delegation Scheme, the Scrutiny report stresses that changes to the Delegation Scheme have an effect on determining applications and the Committee's workload. Any system needs to address the need for:
- i. Clarity and Propriety
 - ii. The effect of any change on workflow
 - iii. The effect on the Committee's workload
- 4.12 Though planning applications follow comparatively similar processes whatever their size and significance, there is a substantial difference in their nature. A comparatively small change to the wording of the scheme could mean that a disproportionate number of applications would have to be referred to committee. There are already general requirements in the Council's delegated rights, which are relevant to all officers when deciding to give consideration to whether the matters should be referred to Committee:

"2.4 Before exercising a delegated power, each chief officer must consider whether the decision is one that should be referred to the Cabinet, or appropriate committee or sub-committee for a decision."

4.13 Therefore, not only does the Chief Officer have the right, it is a specific consideration and there is no argument that this consideration was used in the Plas Pistyll case. However, from the perspective of the delegation scheme, there are clear messages regarding the implementation of the procedure for each stakeholder.

5. RECOMMENDATIONS

5.1 It is recommended that the Head of Environment Department:

1. Considers potential options as methods of consulting with the Local Member, Community / Town Councils, neighbours etc. on planning applications to vary conditions and on other types of planning applications.
2. Considers the consultation arrangements on applications in or near the Area of Outstanding Natural Beauty (AONB) in terms of the AONB Service and the AONB Joint-committee, where this is reasonable and appropriate and having regard to the statutory requirements for consultation and for making decisions on planning applications.
3. Continues to hold regular training sessions for all Members and that all Members give priority to attending those sessions. This could include individual sessions for a Member if necessary.
4. Completes the 12-month monitoring on the implementation of the new Delegation Scheme and report back to the Scrutiny Committee afterwards on the Delegation Scheme and on recommendations 1, 2 and 3.

6. APPENDICES

- Appendix 1 - Report to the Full Council 3 May 2018
- Appendix 2 - Consultation with neighbours
- Appendix 3 - Site notice
- Appendix 4 - Press notice
- Appendix 5 - Consultation with Local Member
- Appendix 6 - Consultation with Community Council and statutory consultees