

## **OVERVIEW AND SCRUTINY BOARD – 19<sup>th</sup> December 2016**

### **Planning Delegations**

The Overview and Scrutiny Board were requested to investigate the Planning delegations within the Council's Constitution. This followed a notice of motion put forward by Councillor P. M. McDonald at the Council meeting held on 21<sup>st</sup> September 2016, as follows:

*“We call upon the Council to create a Working Party to review Delegated Powers in relation to Planning matters.”*

Following discussion at the Council meeting it was agreed that the item would be referred to the Overview and Scrutiny Board for further consideration. The matter was duly discussed at the Overview and Scrutiny Board meeting held on 31<sup>st</sup> October 2016 with Members agreeing that further information should be provided before making a decision as to whether an in depth investigation was necessary. The information detailed below sets out background information for this purpose.

### **Flexible options for planning permissions**

How can a proposal that has planning permission be amended?

When planning permission is granted, development must take place in accordance with the permission and conditions attached to it, and with any associated legal agreements.

New issues may arise after planning permission has been granted, which require modification of the approved proposals. Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted. Where less substantial changes are proposed, there is the following option for amending a proposal that has planning permission:

### **Making a non-material amendment to a planning permission**

Is there a definition of a non-material amendment?

There is no statutory definition of 'non-material'. This is because it will be dependent on the context of the overall scheme – an amendment that is non-material in one context may be material in another. The local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990.

### **Is consultation/publicity required?**

As an application to make a non-material amendment is not an application for planning permission, the existing Town and Country Planning (Development

Management Procedure) (England) Order 2015 provisions relating to statutory consultation and publicity do not apply. Therefore local planning authorities have discretion in whether and how they choose to inform other interested parties or seek their views.

As by definition the changes sought will be non-material, consultation or publicity are unlikely to be necessary, and there are unlikely to be effects which would need to be addressed under the Environmental Impact Assessment Regulations 2011.

### **Is notification required?**

As an application for a non-material amendment is not an application for planning permission, the normal provisions relating to notification do not apply.

Instead, before the application is made, the applicant must notify anyone who is an owner of the land which would be affected by the non-material amendment or, where the land comprises an agricultural holding, the tenant of that holding. The applicant must also record who has been notified on the application form. Anyone notified must be told where the application can be viewed, and that they have 14 days to make representations to the local planning authority. There is no prescribed form for this and no requirement for an ownership certificate or an agricultural holdings certificate to be provided. These requirements are set out in article 10 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

### **What does the local planning authority have to take into account when making its decision?**

The local planning authority must have regard to the effect of the change, together with any previous changes made under section 96A. They must also take into account any representations made by anyone notified, provided they are received within 14 days of notification. As this is not an application for planning permission, section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply.

### **Can the local planning authority allow this form of application if they consider that the amendment sought is not non-material?**

This procedure, which has no consultation requirements and minimal notification requirements, cannot be used to make a material amendment.

**Ruth Bamford**  
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Reference: <http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/making-a-non-material-amendment-to-a-planning-permission/>