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STANDARDS COMMITTEE AGENDA

Date: Friday, 19 November 2021

Time: 10.00 am

Venue: Council Chamber, Moorlands House, Stockwell Street, Leek

11 November 2021

PART 1

1. Apologies for absence, if any.
2. Urgent items of business, if any (24 hours notice to be provided to the Chairman).
3. To approve as a correct record the Minutes of the previous meeting. **(Pages 3 - 4)**
4. Declarations of interest, if any:
 - Disclosable Pecuniary Interest;
 - Other interests.
5. Local Government Ombudsman Annual Letter **(Pages 5 - 18)**
6. Planning Applications Scheme of Delegations **(Pages 19 - 28)**
7. Exclusion of the Press and Public

The Chair to move:-

"That pursuant to Section 100A(2) and (4) of the Local Government Act, 1972, the public be excluded from the meeting in view of the nature of the business to be transacted or nature of the proceedings whereby it is likely that exempt information as defined in Section 100A (3) of the Act would be disclosed to the public in breach of the obligation of confidence or exempt information as defined in Section 100I (1) of Part 1 of Schedule 12A of the Act would be disclosed to the public by virtue of the paragraphs indicated."

8. To approve as a correct record the Exempt Minutes of the previous meeting. **(Pages 29 - 30)**
9. Standards Complaints Monitoring Report **(Pages 31 - 34)**

MARK TRILLO
EXECUTIVE DIRECTOR AND MONITORING OFFICER

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STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

STANDARDS COMMITTEE MEETING

Minutes

THURSDAY, 25 MARCH 2021

PRESENT: Councillor G Bond (Chair)

Councillors J Aberley, Mr P Brough, B Cawley, B Emery, D Fowler,
I Herdman, T Holmes, K Hoptroff, Councillor B A Hughes,
K J Jackson, B Johnson, Mr H Mawdsley, I Plant, L Swindlehurst,
P Taylor and P Wilkinson

APOLOGIES: Councillor K Martin

35 **TO APPROVE AS A CORRECT RECORD THE MINUTES OF THE
PREVIOUS MEETING.**

RESOLVED – That the minutes of the meeting of the Standards Committee held on
19 November 2020 be **APPROVED** as a correct record and signed
by the Chair.

36 **DECLARATIONS OF INTEREST, IF ANY:**

There were no declarations of interest made.

37 **LOCAL GOVERNMENT ASSOCIATION REVISED MODEL CODE OF
CONDUCT**

Paul Rushworth (Deputy Monitoring Officer) advised members that a new Model
Code of Conduct had been published by the Local Government Association (LGA).

The Government's Committee on Standards in Public Life undertook a
comprehensive review of local government ethical standards and published a report
in January 2019 with 26 recommendations, the first of which was for the LGA to
create an updated model code of conduct. This was published in December 2020
and was appended to this report. Most of the amendments related to councillors' use
of social media.

The Council's current Code of Conduct was approved in July 2019 after being
revised in consideration of the best practices recommendations which had been set
out in the aforementioned ethical review. The Government had not yet responded to
the formal recommendations within the review report. It was likely that there would
be further legislative change and the Code would then require further amendment.
The proposal was therefore to present a further report to members at that stage.

Given the prevalence of social media-related issues currently being experienced. It
was expected that there would be changes to the sanctions available following any
legislative change.

Standards Committee (SMDC) - 25 March 2021

Responding to member queries, Mark Trillo (Monitoring Officer) gave advice as to the correct use of social media by members. The Chair advised members to contact officers for any guidance or advice.

RESOLVED – That the report be **NOTED**.

38 **EXCLUSION OF THE PRESS AND PUBLIC**

RESOLVED:

That, pursuant to Section 100A(2) and (4) of the Local Government Act, 1972, the public be excluded from the meeting in view of the nature of the business to be transacted or the nature of the proceedings whereby it is likely that confidential information as defined in Section 100A (3) of the Act would be disclosed to the public in breach of the obligation of confidence or exempt information as defined in Section 100 I (1) of Part 1 of Schedule 12A of the Act would be disclosed to the public by virtue of the Paragraphs indicated.

39 **TO APPROVE AS A CORRECT RECORD THE EXEMPT MINUTES OF THE PREVIOUS MEETING.**

Members considered the Exempt Minutes of the meeting held on 19 November 2020.

40 **COMPLAINTS MONITORING REPORT**

Members considered a report on complaints made under the Code of Conduct in the period since the committee previously met.

The meeting closed at 11.00 am

Chairman _____ Date

STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

Standards Committee

19 November 2021

TITLE:	Local Government Ombudsman Annual Letter
PORTFOLIO HOLDER:	Councillor Ralphs - Council Leader SMDC
CONTACT OFFICER:	Karen Lomas - Head of Customer Services
WARDS INVOLVED:	Non-Specific

Appendices Attached – Local Government and Social Care Ombudsman Annual Review Letter

1. Reason for the Report

1.1 To advise members of the content of the Ombudsman's Annual Letter for the period April 2020 – March 2021

2. Recommendation

2.1 That members note the content of the Ombudsman's Annual Letter (included at Appendix A)

3. Executive Summary

3.1 The Local Government Ombudsman's Annual Review Letter summarises complaints and enquiries received over the previous year in relation to the Council. The letters are published on the Ombudsman's web site together with specimen data used to inform the Ombudsman's Annual Report

3.2 In 2020/21 the Ombudsman received 5 new enquiries or complaints related to the Council, compared with 5 in the previous year. Details of the decisions made and investigated complaints in 2020/21 are summarised as follows-

Service Area	Complaint	Ombudsman's Detailed Finding
Upheld (0)		
Not upheld (0)		
Closed after initial enquiries (5)		
Planning	<p>Mr X lives next to a property where the owner has installed a platform and summerhouse in their garden, 1.6m from the boundary with Mr X's property. Mr X reported the matter to the Council. Officers determined the structure was not compliant with General Permitted Development Rights (GPDR), but decided not to take enforcement action.</p> <p>Mr X complained that the Council:</p> <p>failed to take enforcement action against the neighbour; and</p> <p>failed to take into account his concerns about the development.</p> <p>Mr X says his dining room and garden are overlooked by users of the summerhouse and light shines from its windows towards his property. He has concerns about noise from next door and about the impact of the structure when he comes to sell his house. Mr X says he and his family have been caused distress and stress by the matter. He is upset the Council ignored his concerns.</p> <p>Mr X wants an independent person to measure the development again. He wants an increase in the height of the neighbour's fence to stop the overlooking, reduce noise, and block light from the summerhouse.</p>	<p>Local Planning Authorities (LPAs) such as this Council may take enforcement action where there has been a breach of planning control. Enforcement action is discretionary. Section 171A of the Town and Country Planning Act 1990 ('the Act') says a breach of planning control is:</p> <p>the carrying out of development without the required planning permission; or</p> <p>failing to comply with any condition or limitation subject to which planning permission has been granted.</p> <p>LPAs may serve an Enforcement Notice under section 172 of the Act where the breach involves carrying out development without permission, if it is expedient to do so. It is for the LPA to decide whether it is expedient to take action. An Enforcement Notice creates a right of appeal to the Planning Inspectorate for the person served with the Notice.</p> <p>The LPA may invite a retrospective application to regularise development which has already been undertaken. Such an application must be considered in the normal way.</p> <p>We cannot criticise an LPA's enforcement decision unless there is evidence of fault in the process officers followed to make that decision which, but for that fault, they would have made a different decision.</p> <p>On receiving Mr X's report about his neighbour's development, an officer visited the site and determined, due to the height and location of the summerhouse and its platform, the neighbour could not rely on the structure complying with GPDR. Officers sought</p>

mitigation measures for the overlooking and loss of privacy. They asked the neighbour to install opaque film on the two windows most likely to allow overlooking from the summerhouse, and the neighbour did this. The Council also invited the neighbour to submit a retrospective planning application. The neighbour did not make an application, so it fell to officers to decide whether to use their discretionary enforcement powers.

Officers produced an 'Expediency Report', signed off by the senior officer, confirming that it was not expedient to enforce. The Council agreed with Mr X that the neighbour's development breached planning control. But a property being built without permission and subsequently unregularised is not in itself sufficient grounds for a council to enforce. Officers needed to determine if the structure as now built had been the subject of a planning application, whether it would have been granted permission. Officers decided it would, so it was not expedient for them to enforce.

In reaching their decision, officers considered comments and photographs submitted by Mr X. While the Council did not make the decision Mr X wanted, the information I have seen shows officers took account of Mr X's evidence and concerns when reaching that decision. I realise Mr X disagrees with their decision. But it is not itself fault for a council to properly make a decision with which someone disagrees.

The Council reached its professional judgement decision not to use its discretionary enforcement powers to enforce against Mr X's neighbour after following the proper process. I do not consider there are grounds for us to go behind the officers' enforcement decision here. There is not enough evidence of fault in the way officers followed and applied the appropriate processes to make their professional judgement decision not to use their discretionary enforcement powers.

		<p>Mr X notes that the plastic film the neighbour has put on one of the summerhouse windows overlooking his patio windows and garden could easily be removed. If the neighbour were to change the summerhouse by, for example, removing that obscuring film, Mr X may wish to report this to the Council. If the neighbour refused to replace the film, it would be for the Council to decide whether it means they should enforce, because its earlier decision not to enforce was in part based on the presence of the film. That would be a matter for officers to determine, to make a new decision, should this situation arise in the future.</p> <p>I note Mr X is concerned about excessive noise and light spillage caused by the neighbour using the summerhouse. Should those issues arise, they would be matters for Environmental Health officers. On receipt of any reports, they would need to determine whether the frequency, level and duration of any claimed disturbances were causing a statutory nuisance to Mr X. That would be a decision for those officers to make.</p> <p>LGO Summary - We will not investigate Mr X's complaint about the Council's decision not to take enforcement action against his neighbour's summerhouse and platform. There is not enough evidence of fault by the Council in the process it followed to consider and make its discretionary decision on the matter to warrant our investigation.</p>
<p>Councillor Conduct and Standards</p>	<p>The complainant, who I refer to as Mr X, complains about the Council's response to his complaint about a councillor who he says has misled the public and the police about the status of a footpath by Mr X's property. He says this has been very stressful and he wants the councillor to stop giving out false information.</p>	<p>Mr X complained to the Council about the actions of a neighbour, who is also a councillor. His complaint concerned information the councillor was presenting about the status of a footpath by Mr X's property.</p> <p>Mr X maintains the footpath cannot be used by vehicles but he says the councillor told the police and members of the public that vehicles could use the path and that it was a byway.</p> <p>In accordance with normal procedures,</p>

		<p>the Council's Monitoring Officer discussed the Code of Conduct complaint Mr X made about the councillor with the Independent Person. Having done so, the Monitoring Officer wrote to Mr X to explain that the Code only applies to councillors acting in their official capacity as a councillor and that as the councillor was not acting in his official capacity the Council did not consider the complaint Mr X had made could amount to a breach of the Code. It told Mr X it would take no further action.</p> <p>Dissatisfied with the Council's response, Mr X complained to us.</p> <p>LGO Summary: Mr X complains about the Council's response to his complaint about the actions of a councillor. We will not investigate the complaint because we are unlikely to find evidence of fault in the way the Council considered the complaint.</p>
<p>Councillor Conduct and Standards</p>	<p>The complainant, who I shall refer to as Mr X, complains the Council refuses to investigate his complaint that a councillor breached the Code of Conduct.</p>	<p>Mr X complained to the Council that a councillor had sent information to the Planning Inspector which was not true. He said the councillor was trying to discredit his integrity and that of third parties. He also said the councillor was attempting to influence the outcome of a planning appeal by lying to the Planning Inspector. Mr X believes this to be a breach of the code of conduct.</p> <p>The Deputy Monitoring Officer wrote to Mr X. He confirmed he had considered the complaint with the Council's Independent Person. The Deputy Monitoring Officer confirmed they had also considered all the correspondence Mr X provided and the background to the complaint, including the Councillor's letter to the Planning Inspector.</p> <p>The Deputy Monitoring Officer confirmed that having considered all the information, he, and the Independent Person had not found a breach of the code of conduct which merited further</p>

		<p>action.</p> <p>LGO Summary - We will not investigate this complaint about the Council's decision not to investigate a complaint that a councillor had breached the Code of Conduct. We have not seen evidence of fault in the way the Council considered the complaint.</p>
Assets	<p>Mrs X complains the Council has denied ownership of a piece of land where she fell. Mrs X seeks compensation for injuries she sustained but does not know who owns the land.</p>	<p>Mrs X fell on an uneven piece of land and sustained injuries for which Mrs X seeks compensation. Mrs X says she has been told the Council owns the land but complains it has told her it does not.</p> <p>The Council has sent Mrs X a land registry plan which it says shows the land is not Council land and is unregistered. It has provided information about tracing owners of unregistered land and suggested Mrs X might seek legal advice.</p> <p>LGO Summary -Mrs X complains the Council has denied ownership of a piece of land where she fell. We will not investigate as it is unlikely we will find fault by the Council or that we can add to what it has already said.</p>
Planning	<p>Mrs X complains that the Council failed to follow due planning process in the determination of her neighbour's planning application by not consulting on the final accepted development plans.</p> <p>Mrs X says the Council's errors mean she lost her opportunity to object to the accepted plans, to refer the plans to her elected Councillor, or try to have them considered by the planning committee. She says the development will negatively impact on her property's value, and its amenity by overshadowing it and being overbearing. Mrs X says the matter has left her disillusioned with the planning process and has caused her upset and anxiety.</p> <p>Mrs X says that ideally, she wants the Council to withdraw the planning permission, and to reconsider it properly, in line with due process, involving all interested parties. She</p>	<p>Mrs X lives next door to a property which was the subject of a planning application. The applicant sought to extend the rear, side and front of the property. During the consultation period, Mrs X objected to the original application plans because she considered the rear and side extensions would have unacceptable impact on her property's amenity, being overbearing and causing loss of light.</p> <p>The applicant submitted amended development plans before the Council decided the application. The Council used those second plans to determine the application, without further public consultation.</p> <p>Council consultation on amended plans is discretionary. Where a planning application is amended, it is up to a council to decide whether further publicity</p>

also wants:

1. the Council officers responsible for the errors to be held to account;
2. the Council to revise its current planning process to be more democratic;
3. compensation for her upset and anxiety.

and consultation is needed, in the interests of fairness. The decision not to reconsult was a discretionary one officers were entitled to take here. Mrs X says she recognises the Council had discretion to decide not to re-consult, but disagrees with councils having that discretion. The Ombudsman would not find a council to be at fault where it has followed the process as set down in law. If Mrs X thinks the national planning process on this issue should change, that would be a matter for her to raise with her MP as her national government representative.

When making a discretionary decision whether to consult on new plans, a council should consider whether, without re-consultation, any parties entitled to be consulted would be deprived of the opportunity to make representations they may have wanted to make on the amended application. The Council had to decide whether the changes between the original and second plans would prompt any different responses than had already been received from the earlier consultation.

Officers considered the objections Mrs X and others had already made would not be affected by the second plans, and that those amended plans would not give rise to different objections, so did not require further consultation.

The online planning documents show the applicant's second plans scaled back the length of the side elevation and amended the roof design. The side extension part of the development is closest to Mrs X's property and caused her concern. These second plans also removed the first-floor element of the rear extension. Officers took the view that the amended proposed development reduced the opportunity for it to cause planning harm to existing properties, including Mrs X's, and decided not to reconsult. The decision not to reconsult was a discretionary one officers were entitled to take. There is not sufficient evidence of fault by the officers, in the way they made their decision not to do further consultation, to warrant an

Ombudsman investigation.

Mrs X says it is her opinion that the amended second plans had the same impact on her property as the original plans. This would support the Council's decision not to reconsult on the amended plans. Mrs X's view indicates she would have made the same objections to the amended plans as she had already made against the original ones.

Mrs X says the Council did not take account of the impact of the development on her property. But the officer's report summarised her objections and then considered the impact on the amenity of Mrs X's property. Officers noted there would be some impact caused by the amended side extension, but that in their judgement it would not be enough to warrant refusal of the application.

There is not enough evidence of fault in the way the Council made its planning decision here to justify an Ombudsman investigation. I recognise Mrs X disagrees with the decision officers reached, but it is not fault for a council to properly make a decision with which someone disagrees.

LGO Summary - The Ombudsman will not investigate Mrs X's complaint about the Council not consulting her on the final accepted development plans for her neighbour's extension. There is not enough evidence of fault by the Council in its decision not to re-consult to warrant an Ombudsman investigation.

Referred back for local resolution (0)

3.3 A copy of the Ombudsman's letter is attached as an appendix to this report.

3.4 Members may also wish to note that the small number of complaints reaching the Ombudsman is set against a background of **52** complaints received by the Council in the period in question, which helps to illustrate the strength of the Council in ensuring complaints are dealt with promptly and appropriately.

3.2 Below is a table showing Local Government Ombudsman figures for 13 Local Authorities. The average for upheld complaints across the 13 is **38%**

	Complaints and enquiries received 2020/21		Figures for Upheld / Not upheld (detailed investigations carried out)			
			Decisions made 2020/21	Upheld	Not upheld	Total
Cannock Chase	2	0	0	0	0	0%
Castle Point	4	2	1	1	2	50%
Chorley	8	2	1	1	2	50%
Fenland	8	3	0	3	3	0%
Forest of Dean	7	1	1	0	1	100%
High Peak Borough Council	4	0	0	0	0	0%
Hinckley & Bosworth	5	2	0	2	2	0%
Kettering	6	1	1	0	1	100%
Rugby	5	1	1	0	1	100%
Selby	5	2	0	2	2	0%
South Derbyshire	2	0	0	0	0	0%
Staffordshire Moorlands	5	0	0	0	0	0%
Wyre Forest	1	0	0	0	0	0%

4. How this report links to Corporate Priorities

4.1 Ensure our services are easily available to all our residents in the appropriate channels and provided 'right first time'.

5. Alternative Options

5.1 There are none to consider.

Mark Trillo
Executive Director (Governance & Commissioning)

**Web Links and
Background Papers**

Contact details

Karen Lomas
Head of Customer Services
karen.lomas@highpeak.gov.uk

21 July 2021

By email

Mr Stokes
Chief Executive
Staffordshire Moorlands District Council

Dear Mr Stokes

Annual Review letter 2021

I write to you with our annual summary of statistics on the decisions made by the Local Government and Social Care Ombudsman about your authority for the year ending 31 March 2021. At the end of a challenging year, we maintain that good public administration is more important than ever and I hope this feedback provides you with both the opportunity to reflect on your Council's performance and plan for the future.

You will be aware that, at the end of March 2020 we took the unprecedented step of temporarily stopping our casework, in the wider public interest, to allow authorities to concentrate efforts on vital frontline services during the first wave of the Covid-19 outbreak. We restarted casework in late June 2020, after a three month pause.

We listened to your feedback and decided it was unnecessary to pause our casework again during further waves of the pandemic. Instead, we have encouraged authorities to talk to us on an individual basis about difficulties responding to any stage of an investigation, including implementing our recommendations. We continue this approach and urge you to maintain clear communication with us.

Complaint statistics

This year, we continue to focus on the outcomes of complaints and what can be learned from them. We want to provide you with the most insightful information we can and have focused statistics on three key areas:

Complaints upheld - We uphold complaints when we find some form of fault in an authority's actions, including where the authority accepted fault before we investigated.

Compliance with recommendations - We recommend ways for authorities to put things right when faults have caused injustice and monitor their compliance with our recommendations. Failure to comply is rare and a compliance rate below 100% is a cause for concern.

Satisfactory remedy provided by the authority - In these cases, the authority upheld the complaint and we agreed with how it offered to put things right. We encourage the early resolution of complaints and credit authorities that accept fault and find appropriate ways to put things right.

Finally, we compare the three key annual statistics for your authority with similar types of authorities to work out an average level of performance. We do this for County Councils, District Councils, Metropolitan Boroughs, Unitary Councils, and London Boroughs.

Your annual data will be uploaded to our interactive map, [Your council's performance](#), along with a copy of this letter on 28 July 2021. This useful tool places all our data and information about councils in one place. You can find the decisions we have made about your Council, public reports we have issued, and the service improvements your Council has agreed to make as a result of our investigations, as well as previous annual review letters.

I would encourage you to share the resource with colleagues and elected members; the information can provide valuable insights into service areas, early warning signs of problems and is a key source of information for governance, audit, risk and scrutiny functions.

As you would expect, data has been impacted by the pause to casework in the first quarter of the year. This should be considered when making comparisons with previous year's data.

Supporting complaint and service improvement

I am increasingly concerned about the evidence I see of the erosion of effective complaint functions in local authorities. While no doubt the result of considerable and prolonged budget and demand pressures, the Covid-19 pandemic appears to have amplified the problems and my concerns. With much greater frequency, we find poor local complaint handling practices when investigating substantive service issues and see evidence of reductions in the overall capacity, status and visibility of local redress systems.

With this context in mind, we are developing a new programme of work that will utilise complaints to drive improvements in both local complaint systems and services. We want to use the rich evidence of our casework to better identify authorities that need support to improve their complaint handling and target specific support to them. We are at the start of this ambitious work and there will be opportunities for local authorities to shape it over the coming months and years.

An already established tool we have for supporting improvements in local complaint handling is our successful training programme. During the year, we successfully adapted our face-to-face courses for online delivery. We provided 79 online workshops during the year, reaching more than 1,100 people. To find out more visit www.lgo.org.uk/training.

Yours sincerely,



Michael King
Local Government and Social Care Ombudsman
Chair, Commission for Local Administration in England

Complaints upheld

The Ombudsman carried out no detailed investigations during this period

Compliance with Ombudsman recommendations

No recommendations were due for compliance in this period

Satisfactory remedy provided by the authority

The Ombudsman did not uphold any detailed investigations during this period

NOTE: To allow authorities to respond to the Covid-19 pandemic, we did not accept new complaints and stopped investigating existing cases between March and June 2020. This reduced the number of complaints we received and decided in the 20-21 year. Please consider this when comparing data from previous years.

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STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

Standards Committee

19 November 2021

TITLE:	Planning Applications Scheme of Delegations
PORTFOLIO HOLDER:	Councillor Mike Bowen – Portfolio Holder for Communities
CONTACT OFFICER:	Ben Haywood – Head of Development Services
WARDS INVOLVED:	Non-Specific

Appendix A – Proposed Revised Delegations

1. Reason for the Report

- 1.1 The remit of the Standards Committee includes the review of the Council's Constitution. Members are asked to consider proposals to revise the Council's planning applications scheme of delegation in order to improve the way in which applications are administered and to make comparable with national averages.

2. Recommendation

- 2.1 That the Committee recommends to Full Council the revised planning delegations.

3. Executive Summary

- 3.1 74% of the Council's planning application decisions are currently made under delegated powers. This is significantly below the national average of 95% and is the second lowest in the Country.
- 3.2 Large committee agendas have a number of negative consequences for the Council including, significant additional resource and cost implications of committee decision making; additional strain on officers, Members and the general public; increased risk of overturns and Appeals; adversely affecting planning application processing times and performance; delaying development and investment; creating uncertainty in the planning process and discouraging applicants and investors.

- 3.3 This report considers how the number of delegated decisions can be increased whilst achieving a balance between efficiency in democratic accountability.
- 3.4 Analysis has shown that a significant percentage of committee decisions are accounted for by “call-ins”. The Planning Applications Committee often subsequently follows the officer recommendation meaning that had it been dealt with under delegated powers, the Committee would have been happy with the outcome. This report puts forward a number of proposed changes to the current scheme of delegation aimed at reducing the number of call-in’s by more rigorous scrutiny of requests, whilst maintaining and building Member confidence in the process and judgement of officers.
- 3.5 It also proposes a number of other changes to the scheme of delegation to allow non-controversial decisions, such as refusals of contentious applications, or decisions which are clearly in accordance with adopted policy to be taken by officers.
- 3.6 It proposes to do this by:
- Ensuring that all call-ins are received during the statutory consultation period.
 - Replacing the existing adversarial “dispute resolution” panel with a more collaborative joint consideration of call in requests in conjunction with the Chair and Vice-Chair of the Committee.
 - Ensuring that decisions which are clearly in accordance with local and national planning policies do not need to be considered by Committee
 - Giving officers the ability to refuse applications which are controversial, in accordance with the wishes of the community, without the need to refer to Committee.
 - Clarifying the position around resubmitted / revised applications and Member / staff / Council applications.
 - Maintaining an element of discretion.
- 3.7 An amended wording for the delegation within the Constitution is proposed at Appendix A to the report. This report was considered by the Constitution Review Working Party on 21 October 2021. The Working Party approved the proposals contained in Appendix A for recommendation to Full Council subject to the following amendments:
- Part (i) – The panel considering the request for call-in to include the Cabinet Member with responsibility for planning.
 - Part (i) The Member calling-in the application to have the option of being present at the panel at the discretion of the Chair of the Planning Applications Committee.
 - Part (i) – Addition of “Legal advice to be sought where appropriate”;
4. **How this report links to Corporate Priorities**
- 4.1 Achievement of the Council’s priorities is dependent on a sound decision making process being in place.

5. Alternative Options

5.1 The Committee is asked to consider the proposals put forward in the report.

Neil Rodgers
Executive Director (Place)

Web Links and Background Papers

[Council Constitution](#)

Contact details

Ben Haywood
Head of Development Services
Ben.haywood@staffs Moorlands.gov.uk

6. Detail

6.1 In the year ending September 2020, according to figures published by the Department for Communities and Local Government, at SMDC 74% of decisions made on planning applications were under delegated powers, compared to a national average of 95%. This was the second lowest level of delegation in the country with only the Isles of Scilly at 54% below SMDC.

6.2 From the 1st April 2018 to 31st December 2020 313 applications were determined by Committee, giving an average number of applications per monthly agenda of 7.2. However, in practice, agendas can regularly have up to 10 or 11 items.

6.3 Low levels of delegation have a number of negative implications for the Council, including:

- **Cost & Resources** – Committee decisions are more expensive compared to delegated decisions. A delegated decision requires the case officer to produce a report, which must be reviewed by a senior officer and signed off. The decision notice can then be issued. A Committee decision requires a longer and more detailed report, which must then be cleared and reviewed by a senior officer. The agenda must then be produced and published by Democratic Services. A Chair's briefing meeting is then held attended also by the Vice Chair, Head of Development Services, Democratic Services Officer and other planning officers or legal officers as required. Letters are sent to all of those who registered an interest in the application inviting them to the meeting. Speakers must be registered by Democratic Services. The day before the meeting, officers must prepare a committee presentation and late representations / update report, which again must be published by Democratic Services. Where a virtual meeting is to be held and site visit video must be produced. On the day of committee, site visits take place in the morning (where a physical meeting is to be held) or a "virtual" site visit takes place, attended by the Head of Service, Members and other officers as required. The meeting itself then takes place involving all of the above mentioned officers again. Where an

agenda runs to 10 or 11 items, the amount of resource consumed can be very considerable.

- **Length of Agenda** – Site visits commence at 10am, and where there is a long agenda of, for example 10 items, can be expected to last until after 1pm. The meeting itself begins at 2pm and can continue, in some cases until after 6pm in the evening. This means that committee can be a long and tiring day for Members and officers, alike, as well as interested members of the public who may be watching the committee or waiting their turn to speak. In the majority of cases a public speaker will only be interested in one item on the agenda of course. Queries must be raised as to whether fatigue on behalf of those involved in the meeting could negatively impact quality of decision making.
- **Overturn and Appeals.** – Higher levels of committee decision making can lead to more overturns of recommendations and potentially more appeals. Applications which are refused by committee contrary to officer recommendation generally have a poorer chance of being successfully defended at Appeal.
- **Time Delays / Impact on performance** – The Council's planning application performance is measured at the corporate and national level by the number of applications dealt with in the statutory 8 or 13 week timescales or other timescale as agreed in writing with the applicant. Committees meet monthly and because of the amount of additional work involved in a committee decision, inevitably decisions take longer to issue from the point of recommendation. If an application is not ready to be determined at the point at which the agenda is published it must then wait a further month for determination. This adds time delays into the process and can adversely affect performance, particularly where call-in requests are received, close to the end of the 8 or 13 week period. Where this happens, the Council is fortunate in that officers have a good working relationship with agents and applicants, and most are happy to agree an extension of the determination period to cover the period until committee. Accordingly, performance is high but not all applicants are happy to do this which means performance targets which could otherwise be achieved are missed. Furthermore, government proposals in the recent White Paper propose removing the ability to agree extensions of time with applicants and financial penalties for not meeting performance targets.
- **Uncertainty** – The committee process creates uncertainty in the Council's decision making. An applicant can engage in positive pre-application discussions with officers, and achieve a recommendation of approval but has no certainty that permission will be granted. This can lead to a reluctance on behalf of developers to invest time and money in pursuing schemes in the Staffordshire Moorlands where there is little certainty of a successful planning outcome.

6.4 Clearly, the only way in which this issue can be addressed in order to reduce the number of applications going to committee and to fall in line with other

authorities and the national average is to examine carefully, the present scheme of delegation and terms of reference to Planning Committee.

6.5 The Government's Planning Practice Guidance states:

"The exercise of the power to delegate planning functions is generally a matter for individual local planning authorities, having regard to practical considerations including the need for efficient decision-taking and local transparency. It is in the public interest for the local planning authority to have effective delegation arrangements in place to ensure that decisions on planning applications that raise no significant planning issues are made quickly and that resources are appropriately concentrated on the applications of greatest significance to the local area.

Local planning authority delegation arrangements may include conditions or limitations as to the extent of the delegation, or the circumstances in which it may be exercised". (Paragraph: 015 Reference ID: 21b-015-20140306 Revision date: 06 03 2014)

6.6 The basic premise of a scheme of delegation must be to achieve a balance between efficiency in democratic accountability. The Council's current scheme of delegation states:

Any matter which is within the Terms of Reference of the Planning Applications Committee, as fully defined in Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and identified in Part III of the Council's Constitution shall be delegated to the Head of Development Services except where:-

- (i) a matter is requested in writing by a Member giving planning reasons for consideration and determination by the Committee;*
- (ii) a matter is contrary to agreed local plan policy, such that its approval or refusal would be defined as a departure.*
- (iii) in the view of a Member of the Council or the Head of Development Services, a matter is of significant public interest, and/or, is believed to be controversial the matter shall be considered and determined by the Committee;*
- (iv) notwithstanding the foregoing clauses (i) - (iii) the Head of Development Services may at his discretion refer any other matter to the Committee for consideration/ determination*
- (v) in the event that the Head of Development Services is unwilling to refer an application to the Committee because he considers the proposed planning reasons to be insufficient, and the Member requesting the referral disagrees, the matter shall be determined by a panel consisting of the Chair of the Planning Applications Committee, the Executive Director and the Head of Legal and Election Services.*

6.7 In addition, there are a number of "unwritten" rules which have historically been applied through custom and practice. For example, where a previous application on a site has been to Committee, any subsequent amendments or resubmissions also go to Committee.

- 6.8 An analysis has been undertaken of the reasons for referral to planning committee. Unlike most local planning authorities over recent years SMDC has historically experienced very low levels of major developments, and in particular major housing applications. In fact, the SMDC scheme of delegation allows officers to deal with major applications, provided that these are not required to be referred to Committee for another reason, e.g. controversial, called in or a departure from policy. Therefore, whilst some of the committee's workload is naturally major schemes, numerically, the majority of applications going to Committee are minor and other applications which are either contentious, are departures from local plan policy, are referred for another reason in the public interest or are called in by Members.
- 6.9 Clearly, little can be done to control the number of contentious applications, and it is right and proper in the interest of accountability and fairness that such applications should be determined by Committee where officers wish to make a decision contrary to the tide of public opinion. However, where officers wish to refuse applications in accordance with the wishes of the community there is the opportunity for greater delegation. The adoption of the Local Plan will reduce the number of applications regarded as departures, although there is a lack of clarity in the current scheme of delegation around whether applications should be refused where the officer recommendation in such cases is in line with adopted policy.
- 6.10 In the period between April 2018 and November 2019, 18% of applications considered by Committee were as a result of Member call-ins. Of the applications called in, in 35% of cases the Member calling in the application was in favour of the proposal and in 65% of cases they were against. 23% of the applications called in resulted in an overturn of the officer recommendation.
- 6.11 From this it can be concluded that, managing the number of call-in's would be an effective means to improve the levels of delegation. The majority of Members are happy for Officers to make decisions under delegated powers but there are a small number who feel that Committee scrutiny is required in a lot more cases than other Councillors do. In order to address this issue, therefore, there is a need for more scrutiny of call-in requests and a more objective approach to accepting them, whilst maintaining and improving member confidence in the process and officer judgement.
- 6.12 Importantly, in the great majority of cases the committee agrees with its officers recommendations on called-in applications. Therefore, had an officer been allowed to make those decisions under delegated powers, the Committee, would have been satisfied with the outcome.

7 Proposal

- 7.1 In order to reduce the number of applications unnecessarily going to committee, the following changes are proposed to the scheme of delegation:

- The basic premise of the call-in process is considered to be sound. Members must give planning reasons in writing. However, call-in's late in the process can be problematic for performance and applicant confidence. It is therefore proposed to limit the call-in period to the statutory consultation period.
- The current scheme includes a provision, in the event that the Head of Development Services is unwilling to refer an application to the Committee because he considers the proposed planning reasons to be insufficient, and the Member requesting the referral disagrees, that the decision whether to call in shall be made by a panel. This consists of the Chair of the Planning Applications Committee, the Executive Director and the Head of Legal and Election Services. This is essentially a "dispute resolution" process and appears somewhat "adversarial" in nature. It is proposed that this should be replaced with a more "collaborative" approach where call-in requests are all considered and agreed by the Head of Service in discussion with the Chair and Vice-Chair thereby building mutual trust in the process.
- At present any "departure" from the Development Plan must be referred to committee. It is considered that the scheme of delegation should be amended to make clear that this is only where the officer recommendation would result in a departure. Determination in accordance with the plan should be under delegated powers.
- Similarly, where a Member wishes to call an application into committee because they are seeking approval or refusal of the application and that decision would be clearly contrary to adopted local or national policy e.g. development in the Green Belt, the decision should be made under delegated powers.
- It is considered that applications which are "controversial" should continue to be referred to committee but only where officers are minded to approve the application. Where officers are minded to refuse in accordance with the wishes of the community this should be done under delegated powers. There is no need to refer to the view of Members in this provision as it is covered under the general call-in provisions under the first bullet point above.
- It is considered that in the interests of probity a specific provision should be made for applications made by staff, Councillors, the Council itself or on land in which the Council has an interest.
- The position around resubmitted applications should be clarified and formalised. These should only be referred to Committee where the Chair, Vice Chair and Head of Service agree that this is necessary rather than being referred automatically.
- It is considered that the Head of Development Services should retain the ability to refer at his or her discretion any other matters in the public interest.

- 7.2 This report was considered by the Constitution Review Working Party on 21 October 2021. The Working Party approved the proposals contained in Appendix A for recommendation to Full Council subject to the following amendments:
- Part (i) – The panel considering the request for call-in to include the Cabinet Member with responsibility for planning.
 - Part (i) The Member calling-in the application to have the option of being present at the panel at the discretion of the Chair of the Planning Applications Committee.
 - Part (i) – Addition of “Legal advice to be sought where appropriate”;
 - Parts (ii) and (iii) – Minor tidying up of the wording.
- 7.3 In response to the latter point, it is considered that Part (iii) is in effect duplicating Part (ii) and should be omitted in the interests of simplification and clarity.
- 7.4 Since the meeting of the Working Party, up-to-date figures have been prepared relating to the number of call-ins. From 1st January to 31st October 2020 from the published agendas, of 62 applications dealt with at committee, 25 were call-ins, which equates to 40%.

APPENDIX A

The amended scheme of delegation as proposed is set out below with the changes highlighted in red:

Any matter which is within the Terms of Reference of the Planning Applications Committee, as fully defined in Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and identified in Part III of the Council's Constitution shall be delegated to the Head of Development Services except where:-

- (i) a matter is requested **during the Statutory Consultation Period** in writing by a Member giving planning reasons for consideration and determination by the Committee, **and where the Head of Development Services, Chair and Vice Chair of the Planning Applications Committee and the Cabinet member with responsibility for planning agree that the application should be put before the Committee.** The Member making the request will have the option of being present at the panel at the discretion of the Chair of the Planning Applications Committee. Legal advice will be sought where appropriate.*
- (ii) a matter is contrary to **agreed adopted** local plan policy, such that **the officer recommendation of approval or refusal** would be defined as a “**departure**” from the **Development Plan**.*
- (iii) in the view of ~~a Member of the Council or~~ the Head of Development Services, a matter is of significant public interest, and/or, is believed to be controversial **and officers are minded to approve the application**, the matter shall be considered and determined by the Committee;*
- (iv) **Any application made by or on behalf of an Elected Member of the Authority, Member of Staff, or the Council's own development or development relating to land in which the Council has an interest***
- (v) **A previous application on the site has been considered by the Committee and the Chair, Vice Chair and Head of Development Services, and the Cabinet member with responsibility for planning agree that the new application should also be considered by committee***
- (vi) notwithstanding the foregoing clauses (i) - (vi) the Head of Development Services may at his discretion refer any other matter to the Committee for consideration/ determination*
- ~~*(vii) in the event that the Head of Development Services is unwilling to refer an application to the Committee because he considers the proposed planning reasons to be insufficient, and the Member requesting the referral disagrees, the matter shall be determined by a panel consisting of the Chair of the Planning Applications Committee, the Executive Director and the Head of Legal and Election Services.*~~

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