

PLACES ADVISORY PANEL

Date of meeting: 27 January 2008
Report of: Andrew Farrow, Head of Planning and Policy
Title: Proposed arrangements for Governance, Planning Committees and a scheme of delegation for planning functions.

1.0 Purpose of Report

- 1.1 To consider arrangements for Planning Governance, Committees and a scheme of officer delegation across Cheshire East post vesting day.

2.0 Decision Required

2.1. To propose to the Governance and Constitution Committee that the Council's development control functions are discharged by a Strategic Planning Board, supported by two Planning Committees and a scheme of officer delegation.

2.2. To propose that the Places Advisory Panel recommends to the Governance and Constitution Committee

A.

- creation of a Strategic Planning Board
- with the Terms of Reference set out at Appendix A
- served by a membership of 14 on a politically proportional basis (ie: Conservative 10, Liberal Democrat 2, Labour 1, Independent 1) including the two Portfolio Holders responsible for Development Management and the Local Development Framework
- with a quorum of 5
- comprising councillors to be nominated at full Council on 24th February
- meeting for the 1st time on [date to be fixed] then on a 3-weekly cycle
- operating as a Shadow Committee forthwith and as a fully operational Council committee from 1st April 2009
- included immediately in the Shadow Council's Constitution and in the Constitution of Cheshire East Council with effect from 1st April 2009.

B.

- creation of two Planning Committees
- with the Terms of Reference set out at Appendix B
- served by a membership of 15 on a politically proportional basis (ie: Conservative 11, Liberal Democrat 2, Labour 1, Independent 1)
- with a quorum of 5

- comprising councillors to be nominated at the first meeting of the Strategic Planning Board
- meeting for the first time on [dates yet to be fixed] and then on a 3-weekly cycle
- to be included as Council committees in the Constitution of Cheshire East Council with effect from 1st April 2009.

C

- adoption of the officer delegation scheme at Appendix C
- to be included in the Constitution of Cheshire East Council with effect from 1st April 2009

3.0 Financial Implications for Transition Costs

3.1 None.

4.0 Financial Implications 2009/10 and beyond

4.1 Not quantified at this stage and dependent on the arrangements chosen.

5.0 Legal Implications

5.1 Without a Committee structure and scheme of delegation that has been formally ratified by the Authority it will not be possible to make lawful decisions after Vesting Day.

6.0 Risk Assessment

6.1 A number of risks can be identified:

6.2 An inappropriate arrangement of Committees in terms of their frequency could lead to the reduced performance of the Development Management Service.

6.3 Committees that are arranged on a too frequent basis could lead to unacceptable impacts on Members and officer time and excessive costs to the Authority.

6.4 An inability to agree an acceptable format for Planning Committees will delay the identification of Members to serve on the Committees, their training and Cheshire East's ability to deliver planning decisions through committees post Vesting Day.

6.5 There will be a significant risk of legal challenge to decisions if the scheme of delegation is unreasonable imprecise or ambiguous. This could result in the decision of the Planning Committee or by officers exercising delegated powers being subject to Judicial Review or the decision making process being investigated by the Local Government Ombudsman.

6.6 If a scheme of delegation is not in place by 1 April 2009, it will not be possible for officers to make lawful delegated decisions on planning matters

7.0 Background and Options

Governance Arrangements

7.1 The Development Management Task Group considered two governance models for the planning function a Council led system or a Strategic Planning Board.

7.2 At its first meeting, the Task Group considered the benefits and disadvantages of the two models and concluded that the Strategic Planning Board was the preferred solution. It noted that the new Authority would have different planning functions as a unitary council than any of the four constituent authorities. Furthermore, the functions of a Development Management service were different, requiring both a different approach to the consideration of development proposals and feedback between the LDF and Development Management processes. The Board would also need to ensure consistency across the Authority and would need to consider the need for protocols on matters such as public consultation (including public speaking in Committee) and the format of all Planning reports.

7.3 The Strategic Planning Board model would allow members of the Board to develop a level of expertise based on training, such that they can be empowered to make informed decisions on the most significant applications and take the wide overview required for Strategic Planning. The other benefit of this model is that it allows such a group of Councillors to manage the workload of those matters requiring a member decision through the use of arrangements with sub-committees. The opportunities are for higher levels of performance to be retained under this model. The disadvantages are that there would be the absence of a wider debate in full Council and that the membership would necessarily need to be restricted to a small number of members, probably between 9 and 15. The membership of the Planning Board would need to be approved by the Council on an annual basis.

7.4 At its December meeting, the Task Group considered the performance and review role. Arrangements in Cheshire currently vary, but elsewhere some authorities have established a parallel Planning Scrutiny Committee to regularly review the making of decisions on planning matters, including monitoring a sample of decisions and monitoring of performance levels. Regular monitoring is important to give members the opportunity to review and change responsibilities and to make modifications to arrangements so as to improve efficiencies and to maintain consistency and accountability between separate committees. Regular meetings of a Strategic Planning Board would provide the most effective model to deliver the Council's decision making on planning applications.

7.5 The Task Group also agreed that the Board should:

- have Cabinet representation of the 2 members responsible for Development Management and the LDF.
- have 12 ordinary members plus the 2 Cabinet members.
- have a quorum of one quarter i.e. at least 5 members.
- reflect the geographical and political composition of the Council.

- normally meet at Westfields as the main administrative HQ of the Authority.
- be flexible as to the location for particular meetings if the item required it.

7.6 The full proposed terms of reference for the Strategic Planning Board are set out in Appendix A.

Planning Committees

7.7 Cheshire East needs to decide, a significant time prior to 1 April 2009, on the arrangements for and the operation of its Planning Committees. This is so that dates can be agreed and advertised for the benefit of all users of the Service, and Members appointed to the committees and training of those Members organised.

7.8 Given the current date, a pragmatic decision needs to be taken with regard to these arrangements, balancing what is achievable by 1st April and will provide service continuity against establishing a uniform, consistent and new identity for Cheshire East's committees which breaks from the different manner in which Committees have been organised in the existing four authorities.

The Current Situation

7.9 A decision on the number of committees required can be informed by the number of applications received by the four constituent authorities. Based on figures from 2007-2008 this is approximately 5000, though this may be reduced by around 20% as a result of the current economic recession. At this point it would seem sensible to design a committee system capable of accommodating higher levels of development activity.

7.10 The number of applications going to committee depends on the level of delegation. Across the three Boroughs this is currently between 90-92%, with delegation at the County at 80% and as a result 400-500 applications go to committee, representing 10% of the total.

Key Issues to determine committee arrangements

7.11 From the 1 April 2009 it is essential that continuity and quality of service is maintained. Crucial to quality is the need to deliver high performance in decision making. The 60%, 65% and 80% targets within 8 and 13 weeks for Major, Minor and Other applications must be achieved to demonstrate that the new authority is delivering high performance.

7.12 Therefore, committees need to be arranged to deal promptly and efficiently with applications. Each district authority currently holds committee meetings every three or four weeks as this is frequent enough to keep the flow of decision making and allows for the completion of business before preparing for the next meeting.

7.13 A further consideration is the need to agree which matters require a committee decision. Of vital importance is the adoption of new uniform delegation scheme. Government recommends that a minimum of 90% of applications should be delegated to officers. The Audit Commission also recognises that this constitutes best practice. It is

clear that there is a risk that where applications go to committee they may not be determined in time to meet targets.

7.14 To maintain high performance, delegation arrangements for the new authority should achieve 90% as a minimum, aiming for 95% in time. This means that only those items which genuinely require a decision by committee should be referred there.

Area Based Decision Making (ABDM)

7.15 In 2006 the Planning Advisory Service (PAS) produced an overview of area-based decision making, together with “top tips” for good practice. It acknowledged advantages of ABDM including

- good use of Members local knowledge,
- local public interest, ease of attendance, participation

but directed criticism at committees based on small geographical areas and served by their own ward councillors. The following pitfalls and mitigating controls were identified

Potential Pitfalls	Good Practice: “top tips”
Area-based committees can take longer to process planning applications	Unless they <ul style="list-style-type: none">- are few in number,- amalgamate areas to produce agendas of appropriate length- are supported by a scheme of delegations to appropriate levels.- convene often enough to meet the 8 and 13 week targets- are properly supported ie: adequate officer capacity and resources- reduce or eliminate the right to call applications in and to refer them up. This improves performance indicators and encourages ownership of and responsibility for the decision made

They may develop inconsistencies in knowledge, expertise and general approach.	Unless you <ul style="list-style-type: none"> - provide regular, robust, compulsory training - monitor consistency
They can increase pressure on councillors to act as community advocates instead of impartial arbiters: which also increases probity challenges. Parochialism	Unless you Train all members as above Avoid small committees served by all the ward councillors.

7.16 The Development Management Task Group took the concerns of the PAS report into account when assessing which arrangements it considered appropriate for the new authority ie:

- committees without a geographical remit,
- committees which do have a geographical split ie: ABDM
- the number of committees which would be most appropriate for the workload.

Appendix D summarises the advantages and disadvantages of various options.

7.17 The Task Group concluded that two committees provided the best solution in terms of local decision making, reasonable costs and achieving performance targets. The division of planning applications between the two committees could be directed by the Strategic Planning Board, responding flexibly and quickly, to actual workloads and deadlines as they evolve. Given that half of the 5,000 applications are currently generated in the south of the new Borough and half in the north, the Board envisaged directing applications predominantly but not exclusively to a northern or southern committee accordingly. This broad, northern/southern direction of applications would build up Members' local knowledge quickly, would reduce the number of deferrals for site visits, would be more convenient for the public, would promote local attendance and involvement. With in-built flexibility rather than a strict geographical split, the two planning committees would avoid the concerns raised by the PAS report regarding slow performance and parochialism. The Committees' size would be significantly larger than those criticised by PAS and a three-weekly cycle of meetings should meet performance targets. A thorough training programme for Members, together with the Strategic Planning Board's continuing oversight, would satisfy PAS Guidance regarding consistency of approach between the two Committees

7.18 The Task Group saw this as an interim solution which would be reviewed by the Strategic Planning Board during its first year of operation. At that point, the overall success of the arrangements and their synergy with other initiatives such as Local Area Partnerships can be assessed. In the meantime, the Board's power to direct applications between the Committees, to adjust the Committees' number and size,

frequency and timing, together with its power to adopt good practice working protocols would ensure that the workload was being managed efficiently and within deadlines.

Scheme of Delegation

7.19 It is widely recognised that a high level of delegation to officers is needed in order to determine applications within the statutory time period and to meet the government's targets for timely decision making. The vast majority of routine applications can be dealt with effectively by officers under delegated powers, whilst the small minority of applications of a more complex and controversial nature are more appropriate for open debate by Planning Committee.

7.20 Draft schemes of delegation were considered at the Development Management Task Group on 23rd December 2008 and again on 8th and 21st January 2009. The Group took account of:

- The desirability of optimising resources and performance in the new authority;
- Options for the committee structure;
- Best practice guidance from the Local Government Association and the Planning Advisory Service;
- A review of practice from other unitary authorities.

7.21 A scheme needs to deliver the following key objectives;

- It should be designed to at least maintain existing levels of performance and meet statutory targets;
- It should provide for the most cost effective and business efficient system;
- It should be inclusive and be able to ensure that all members of the authority, members of the public and other stakeholders can have confidence in the process;
- It should allow an appropriate amount of decision making by members consistent with the objectives set out above;
- It should be capable of being operated easily within proposed systems and processes and be capable of accommodating any changes in the future;
- It needs to be comprehensive but uncomplicated and easily understood by all.

7.22 The Delegations proposed are at Appendix C. Taken together with the Terms of Reference in Appendices A and B, the overall scheme provides that

- major applications would be reserved for the Strategic Planning Board,
- applications of medium size would be reserved for the Committees, together with several other categories which justify public consideration
- the remainder (comprising the smaller, more-routine, less-complex applications) would be delegated to the Head of Planning and Policy.

Arrangements are built in for referral-up and call-in between the higher and lower tiers of delegation, where appropriate.

8.0 Reasons for Recommendation

- 8.1 The proposed arrangements offer a practical and pragmatic approach to deliver the determination of planning applications post Vesting Day with the option that they can be reviewed by the Strategic Planning Board during the first twelve months of operation.

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**Strategic Planning Board
Terms of Reference**

1. To oversee the division of the Council's Development Management functions and workload in order to ensure timely and consistent decision-making at the most appropriate level: and to that end

- (a) to monitor the volume and type of applications determined; assessing the performance of the Development Management service, and, if appropriate
- (b) to vary the number, size and working arrangements of the Planning Committees, to appoint their membership, to vary the division of functions and delegations between the Board, the Planning Committees and the Head of Planning & Policy
- (c) to adopt working protocols and procedures: eg: protocols governing the direction of applications between the Planning Committees, public speaking rights, call-in procedure and others.

2 A. To exercise the Council's functions relating to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000. Most of these functions are delegated to the Planning Committees and then onwards to the Head of Planning & Policy but the following are reserved to the Board

(a) applications for Large Scale Major Development, defined from time to time by DCLG. Currently this includes

- residential developments of 200 dwellings or more, or 4 ha or more;
- 10,000 square metres or more, or 2ha. or more of retail, commercial or industrial or other floorspace.

(b) applications for major minerals or waste development

(c) applications requiring Environmental Impact Assessments

(d) applications involving a significant departure from policy which a Planning Committee is minded to approve.

(e) any other matters which have strategic implications by reason of their scale, nature or location.

(f) any other matters referred up to it at the discretion of the Head of Planning & Policy

3. To exercise a consultation and advisory role, commenting upon the content of proposed planning policy and upon the effectiveness of existing policies employed in development control decisions.

Planning Committees

Terms of Reference

1A. To exercise the Council's functions relating to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges, set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000. Some applications have been reserved to the Strategic Planning Board: others are delegated on to the Head of Policy & Planning: the following are retained for the Planning Committees

(a) applications for Small Scale Major Development, defined from time to time by DCLG. Currently this includes

- residential developments of 10-199 dwellings or between 0.5 and 4ha
- retail or commercial/industrial or other floorspace of between 1,000 - 9,999 square metres. or between 1ha – 2 ha.

1B To determine any other planning & development control matters

(a) advertised as a departure from policy which the Head of Planning & Policy is minded to approve.

(b) submitted by a councillor, senior Council officer (tier 2 or above) or a member of staff employed within the Development Management and Policy service area; or by an immediate family member or partner of these.

(c) involving the Council either as applicant or land owner. Unless the Head of Planning & Policy identifies some significant factor, this category will not normally include minor developments which accord with planning policy and to which no objection has been made.

(d) referred up to them by a councillor in accordance with the Committees' call-in procedure.

(e) referred to them at the discretion of the Head of Planning & Policy.

2. The Committees will refer up to the Strategic Planning Board applications involving a significant departure from policy which they are minded to approve.

Delegation of Planning Functions to Officers

Apart from matters reserved to the Strategic Planning Board and Planning Committees, all those Council functions set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000 which relate to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges are delegated to the Head of Planning & Policy.

The Head of Policy & Planning will refer up to a Planning Committee or to the Strategic Planning Board any particular matter which they consider suitable for determination at that level.

The planning functions are listed in the schedule below. They are to be construed purposively and broadly, to include anything which facilitates or is incidental to them. For example, the power to determine planning applications under s70 Town & Country Planning Act 1990 will include powers governing environmental impact assessments under the various TCP (Environmental Impact Assessment) Regulations. It will also include power to impose conditions, limitations or other restrictions or to determine terms to which approvals are subject, and to modify, vary or revoke approvals.

Where legislation is amended or replaced by new provisions substantially the same as those replaced, then the relevant authority delegated in this Scheme applies to the new provisions.

1. Power to determine application for planning permission.	Sections 70(1)(a) and (b) and 72 of the Town and Country Planning Act 1990
2. Power to determine applications to develop land without compliance with conditions previously attached.	Section 73 of the Town and Country Planning Act 1990.
3. Power to grant planning permission for development already carried out.	Section 73A of the Town and Country Planning Act 1990.
4. Power to decline to determine application for planning permission.	Section 70A of the Town and Country Planning Act 1990
5. Duties relating to the making of determinations of planning applications.	Sections 69, 76 and 92 of the Town and Country Planning Act 1990 and Articles 8, 10 to 13, 15 to 22 and 25 and 26 of the Town and Country Planning

	(General Development Procedure) Order 1995 and directions made thereunder.
6. Power to determine application for planning permission made by a local authority, alone or jointly with another person.	Section 316 of the Town and Country Planning Act 1990 and the Town and Country Planning General Regulations 1992
7. Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.	Parts 6, 7, 11, 17, 19, 20, 21 to 24, 26, 30 and 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995
8. Power to enter into agreement regulating development or use of land.	Section 106 of the Town and Country Planning Act 1990.
9. Power to issue a certificate of existing or proposed lawful use or development.	Sections 191(4) and 192(2) of the Town and Country Planning Act 1990
10. Power to serve a completion notice.	Section 94(2) of the Town and Country Planning Act 1990.
11. Power to grant consent for the display of advertisements.	Section 220 of the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) (England) Regulations 2007
12. Power to authorise entry onto land.	Section 196A of the Town and Country Planning Act 1990
13. Power to require the discontinuance of a use of land.	Section 102 of the Town and Country Planning Act 1990.
14. Power to serve a planning contravention notice, breach of condition notice or stop notice.	Sections 171C, 187A and 183(1) of the Town and Country Planning Act 1990
15. Power to issue a temporary stop notice	S171E of the Town and Country Planning Act 1990
16. Power to issue an enforcement notice.	Section 172 of the Town and Country Planning Act 1990
17. Power to apply for an	Section 187B of the Town and Country

injunction restraining a breach of planning control.	Planning Act 1990
18. Power to determine applications for hazardous substances consent, and related powers.	Sections 9(1) and 10 of the Planning (Hazardous Substances) Act 1990
19. Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.	Paragraph 2(6)(a) of Schedule 2 to the Planning and Compensation Act 1991, paragraph 9(6) of Schedule 13 to the Environment Act 1995 (c. 25) and paragraph 6(5) of Schedule 14 to that Act.
20. Power to require proper maintenance of land.	Section 215(1) of the Town and Country Planning Act 1990.
21. Power to determine application for listed building consent, and related powers.	Sections 16(1) and (2), 17 and 33(1) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990
22. Power to determine applications for conservation area consent.	Section 16(1) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990, as applied by section 74(3) of that Act
23. Duties relating to applications for listed building consent and conservation area consent.	Sections 13(1) and 14(1) and (4) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990 and regulations 3 to 6 and 13 of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) Regulations 1990 and paragraphs 8, 15 and 26 of DETR Circular 01/07.
24. Power to serve a building preservation notice, and related powers.	Sections 3(1) and 4(1) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
25. Power to issue enforcement notice in relation to demolition of unlisted building in conservation	Section 38 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.

area.	
26. Powers to acquire a listed building in need of repair and to serve a repairs notice.	Sections 47 and 48 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
27. Power to apply for an injunction in relation to a listed building.	Section 44A of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990
28. Power to execute urgent works.	Section 54 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
29. Powers relating to the protection of important hedgerows.	The Hedgerows Regulations 1997 (S.I. 1997/1160).
30. Powers relating to the preservation of trees.	Sections 197 to 214D of the Town and Country Planning Act 1990 and the Trees Regulations 1999 (S.I. 1999/1892).
31. Powers relating to complaints about high hedges	Part 8 of the Anti-Social Behaviour Act 2003

Appendix D - Options for Planning Committees

Option	Application numbers (M/C/C&N)	Advantages	Disadvantages	Potential remedial actions
a. 1 plus 3 Strategic Board plus three based on existing Boroughs	2562 1169 1368	<ul style="list-style-type: none"> • Simple to implement • Easily understood • Matches Local Plan boundaries 	<ul style="list-style-type: none"> • Costly (4 committees) • Too similar to existing situation • Inequitable split of application numbers • Large of number of members on planning committees (pot. 56) 	<ul style="list-style-type: none"> • Market and promote as a transitional approach
b. 1 plus 2 Strategic Board plus two northern and southern committees	Approx 2,500 x 2	<ul style="list-style-type: none"> • Simple to implement • Easily understood • equitable split of application numbers • Reflects North / South service delivery of other services • Cost effective (3 committees replacing existing 5) 	<ul style="list-style-type: none"> • Could be seen as propagating a north/south divide • Not radical enough • Potentially lengthy agendas • Could be remote from some applicants 	<ul style="list-style-type: none"> • Take Members from outside areas • Member training • Use appropriate scheme of delegation • Web-casting where appropriate • Rotate locations • Direct applications to northern or southern committees predominantly (but not exclusively) in line with their locations

c. 1 plus 3 Strategic Board plus three committees split north and south on equal application numbers	Approx 1700 x 3	<ul style="list-style-type: none"> • Significantly different approach • Equitable split of application numbers • Retain an element of localism • Potential Compatibility with output areas 	<ul style="list-style-type: none"> • Difficult to explain / understand • May create a split that does not reflect how the Service would wish to be delivered • Large numbers of Members on planning committees (pot. 56) • Definition of output areas not yet confirmed 	<ul style="list-style-type: none"> • Promote links with Output areas / neighbourhood working • Use this as the aim of the transformational phase
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Costs

Assumptions:

The Strategic Planning Board and the Planning Committees would meet every 3 weeks (51 per year).

Strategic Planning Board would be attended by Director, Head of Service and appropriate staff = £900 per meeting plus travel

Planning committees would be attended by Head of Service and appropriate staff = £850 per meeting plus travel

Members not paid by hour – assume £100 per member per meeting.

Accommodation and report preparation costs not included.

Options a and c. (1 plus 3) = £158, 950 per annum

Option b (1 plus 2) = £119, 850 per annum