

<b>Planning Committee</b>	
<b>4 February 2020</b>	<b>Part I</b>
<b>Certificates of Lawfulness – Decision Making</b>	
<b>Report by Director of Highways, Transport and Planning and Director of Law and Assurance</b>	

## **Summary**

This report seeks changes to the arrangements for decision making on applications for lawful development certificates. The current arrangement is that the Planning Committee determines all such applications. It is proposed however that the determination of such applications should be delegated to the Director of Highways, Transport and Planning in consultation with the Director of Law and Assurance.

The underlying approach to dealing with the applications will remain the same – that is the case officer will undertake the necessary investigations and produce a report setting out the evidence associated with an application. If there is no reason for the matter to be determined by the Planning Committee it will then be signed off as a delegated decision. It is envisaged that this change will improve the service that is provided to our customers.

## **Recommendation(s)**

That Planning Committee delegates to the Director of Highways, Transport and Planning in consultation with the Director of Law and Assurance the determination of applications for a certificate of lawfulness for existing or proposed use.

## **1. Background and Context**

- 1.1 At present all decisions on applications for lawful development certificates are taken by the Planning Committee. There are two types of lawful development certificate. A local planning authority can grant a certificate confirming that:
- a) an existing use of land, or some operational development, or some activity being carried out in breach of planning condition, is lawful for planning purposes under Section 191 Town and Country Planning Act 1990; or
  - b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under Section 192 Town and Country Planning Act 1990.
- 1.2 Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force; or for which planning permission is either not required or is granted by virtue of being 'permitted development'. A local planning authority needs to consider whether, purely on the facts of the case and relevant planning law, the specific matter (the subject of the application) is or would be lawful. Planning policy and the merits of the development are not relevant at any stage of such applications.

- 1.3 If the local planning authority is satisfied on the balance of probabilities that the appropriate legal tests have been met, it must grant a lawful certificate. There can be no discretion involved, as regard cannot be had to planning policy or the planning merits of the application.

## **2. Proposal**

- 2.1 It is proposed to delegate decision making on certificate of lawfulness applications from the Planning Committee to the Director of Highways, Transport and Planning in consultation with the Director of Law and Assurance. Applications are subject to the application of strict legal tests and relevant evidence will need to prove, on the balance of probabilities, that development is lawful. The planning merits of the development outlined in such an application are not relevant.
- 2.2 The underlying approach to dealing with work will remain the same – that is, the case officer will prepare the necessary report setting out the evidence and whether the legal tests have been met. However, as is the case with delegated planning applications, their decision will be signed off by a senior manager rather than Planning Committee.
- 2.3 In the event that an application generates significant local interest the matter will be referred to the Planning Committee for a decision.
- 2.4 It is envisaged that this change will improve the service that is provided to our customers by enabling a quicker decision process. It will also reduce the burden on planning officers by allowing shorter, more proportionate delegated reports to be prepared. The Planning Committee would determine slightly fewer applications, albeit typically only one Certificate of Lawfulness application is received each year.

## **3. Resources**

- 3.1 No additional resources are needed to implement this change. It is envisaged that through the adoption of these changes officers will be able to deliver its service in a more effective and efficient manner.

## **4. Risk Implications and Mitigations**

- 4.1 In order to minimise the risk of a decision being challenged a short officer report will be prepared in relation to each application to demonstrate that the evidence has been considered against the appropriate legal tests. A decision on an application will not be undertaken without consultation with the Director of Law and Assurance. On-going training will be provided to appropriate officers.

## **5. Crime and Disorder Act Implications**

Not applicable in relation to this proposal.

## **6. Human Rights Implications**

The proposed approach to working will ensure that the Human Rights legislation is addressed in relation to each application.

## **7. Conclusion**

The current practice is that the Planning Committee determines all applications for certificates of lawfulness. As the determination of such applications is by way of strict legal tests and appropriate evidence it is proposed that decisions are delegated to officers. The underlying approach to dealing with work will remain the same – that is the case officer will prepare the necessary report setting out the evidence and whether the legal tests have been met. If there is no reason for the matter to be determined by the Planning Committee it will then be signed off as a delegated decision. It is envisaged that this change will improve the service that is provided to our customers.

Matt Davey  
Director of Highways, Transport and  
Planning

Tony Kershaw  
Director of Law and Assurance

**Contact:** Becky Moutrey, Senior Solicitor, Tel: 0330 2222708

## **Background Papers**

Terms of Reference of Planning Committee  
Development Control - Delegation Code of Practice