

# Development Control Committee

## Minutes

27 January 2021 at 6.00 pm

### Present:

Councillor Taylor (Chair); Councillors Agbley, Ali, Bridgen, Campbell, Donelon, Franks, M. Hussain, Rivers and Roche

### 06 Apology for Absence – Ref 1

An apology for absence from the meeting was received on behalf of Councillor A. Hussain.

### 07 Minutes - Ref 2.1

That the minutes of the meeting of the Committee held on the 6 January 2021 be taken as read, approved as a correct record and signed by the Chair in due course.

### 08 Scale of Charges to Apply for 2021-22 (Ref 7)

The Business Partner, Devolved Accountancy presented a report in regards to the Scale of Charges for 2020-21 to apply from 1st April 2020 applicable to Development Control.

Members were reminded that the schedule of charges for development control fees were set by statutory guidance, and that the forecasted income for the current year was expected to be in the region of £900,000.

He went on to report that a new range of charges were proposed for administering the Development Control application process to ensure that the Council would recover costs incurred. These charges were also aimed as a deterrent to try to ensure that applicants submitted valid applications at the first time of asking and through the most efficient route.

The Business Partner, Devolved Accountancy informed Members that it was also proposed to increase some existing charges for registering applications received by e-mail or as hard copies. It was proposed to increase the charge for Archive Document Requests Fast Track (within 10 working days) from £36 to £60, an increase of 66.7%, and postal applications from £100 to £120, an increase of 20%. The aim of the increases was to reflect the administrative and scanning resource required to provide the service, and to encourage increased use of the Planning Portal as a more efficient and cheaper alternative.

In regards to the pre-application advice service which began in January 2012 and was not a statutory function that the Council are obliged to provide, there was no proposal to increase Pre-application charges for 2021-22. He added that the use of the Pre-Application Advice service was optional and did not guarantee an approved scheme but on the whole achieved better designed, more sustainable development in the town. The charges needed to remain competitive to support the continued use of the service. He went on to say that a benchmarking exercise was undertaken last year to ensure that our charges were in line with most neighbouring authorities and nationally.

**Resolved:** That the Scale of Charges Proposals for 2021-22 to apply from 1 April 2021 applicable to Development Control be approved as set out in the report (Ref: 7).

## 09 Constitution Review Ref 8

The Head of Planning presented a report which sought the Committees views on changes to the Constitution in regards to the Scheme of Delegation, Call-In powers, referral to Full Council and renaming the Committee to 'Development Management Committee.

He advised Members that the Case for Change was part of the Council's Future Ready Programme which set out the vision of enabling the Council becoming a highly productive and efficient organisation. This included reviewing processes to identify efficiencies to support the Emergency Budget and moving the organisation towards a new Target Operating Model (TOM). He added that a key focus was to review the delivery of effective, timely and statutorily/financially robust formal and devolved decision-making, which holds the confidence of elected Members and provided transparency and accountability for members of the public.

As part of the Constitutional Review a report was presented to Constitutional Sub-Committee on the 4<sup>th</sup> November 2020 for their steer. The outcome was that Members were supportive of the proposed change of the change in name of Development Control Committee, however in relation to the other proposed changes, they wanted the matters to be considered by the committee and for the outcome being reported to them at a future meeting. Officers noted that the Right to Speak changes set out in the report had in fact been permanently approved by DC Committee at its meeting on the 30<sup>th</sup> September 2020, and it was not proposed that this change was now revisited.

The Head of Planning reminded Councillors that the Development Control Committee had the ability to agree permanent changes to the Constitution without the need for any other Committee or Full Council approval with some of the proposed changes. This applied to changes to the Scheme of Delegation. In relation to the proposed change to the referral of items to Full Council, the "Call-in" powers and the change in the Committee name, these could only be agreed at Full Council, although Members could

provide officers with direction in relation to these proposed changes. This steer would support the Constitution Committee to make the decision about whether to take these forward to Full Council for agreement.

### Scheme of Delegation

In regards to the Scheme of Delegation, Members were reminded that the Council, as a Local Planning Authority, had a statutory duty to determine planning applications submitted to it for determination. Under the Council's existing Constitution delegated authority was granted to officers to deal with more of the "straight-forward" and non-contentious applications, such as house-holder and minor applications. He added that those of a more contentious or complex nature were determined at Development Control Committee.

He went on to say that additionally, bringing non-major applications to Committee that were recommended for refusal provided time for the applicant to attempt to address the refusal reasons for that Development Control Committee meeting. This then necessitated the withdrawal of the scheme from the agenda as further assessment and consultation needed to be undertaken before preparing a new report, with the scheme possibly still unacceptable following that process, but the cycle could then repeat.

However, following the Covid 19 Pandemic an Emergency Scheme of Delegation was introduced and has been working successfully for several months, and also helped improve the current service. Therefore, it was proposed to make these charges permanent.

A Member commented that he did not see an issue if a non-major application that was down for refusal at Committee was amended, and therefore withdrawn from the agenda.

The Head of Planning replied that by the time an application had been placed on the agenda, officers would have already considered any changes that would make the scheme acceptable. He added that only once an application had been published on the agenda for refusal, the applicant took the officers advice seriously. Also, if the application was withdrawn from the agenda, additional cost would be incurred to the Council as it would need to re-consult, and even then the application could still be recommended for refusal. The Emergency Scheme of Delegations had made the process more efficient and manageable with inappropriate applications being refused without coming to Committee. He added that applicants still had the right of appeal.

Members also suggested that more clarification was required for what was deemed a minor amendment.

The Head of Planning replied 'minor amendments' were material matter and part of the planning process which was not defined. He added that an S73 came into effect after the original application had been approved and was usually of a controversial manner. He went on to say that once on site, it was not uncommon for the applicant to make some changes. The Peer Review had highlighted that when this happened applications that were referred back to Committee took up unnecessary time and delays for an amendment that could be approved by officer.

Members also raised concern at the proposed number of 10 or more objectors to the officer recommendation in order to bring a report to Committee and that more weight should be applied to a single objector if seriously affected. Members also felt that residents should not lose their democratic rights.

A Councillor commented that the objections should depend on the impact an application had on the neighbourhood. He raised concern that potentially there was a danger that every application with an objection could be brought before Committee, which would bring the entire planning process to a halt. He added that there had to be a balance and that an element of trust between Councillors and Officers was required.

The Head of Planning replied that officers had to apply the Council's policies, which protected the residents of Luton. He added that if there was legitimate concerns by a single objector, officers would consider them on their individual merits.

Members also commented that in regards to the approval of variations, it was expected that the officers would bring to Committee any applications with significant changes.

Councillors commented that Temporary Structures could last a long time especially if there were no objections.

The Head of Planning replied Temporary Structures could be delegated to officers.

The Committee sought clarification on what was meant by 'Departure from the Development Plan no longer being a barrier to refusing application under delegated authority'.

The Head of Planning replied that this could be rephrased

A Councillor raised concern that members raised concern that the term 'Member' could be confusing and that this should be replaced by 'Councillor'. She added that although there was a key in the Constitution which identified this, she suggested that the word Councillor be shown in brackets each time 'Member' was stated. She continued that she was concerned about the residents of Luton who did not know their rights.

The Senior Solicitor (Planning & Planning) replied that the term Member was used in the Emergency and original Scheme of Delegations as well as throughout the Council's Constitution.

### Call-In Powers

The Head of Planning reported that 'Call-In' powers were considered necessary to help facilitate the democratic dimensions of the planning system and was generally supported. However, the current call-in powers may benefit from a review to consider whether a better balance could be achieved in still being able to allow Members the ability to serve their constituents whilst also maintaining a Corporate focus on what was the most suitable for the organisation as a whole. It is proposed that the following call in process is adopted by the Council;

*“An application can be called in to Development Control Committee by a Member of the Council, provided;*

*i) It is seconded by another Member on DCC (not a substitute)*  
*ii) That the call-in occurs within 21 days of the application being published on the Planning Register (Public Access Website), and*

*iii) A written reason is provided as to why the application is being called in.*

Members of the Committee felt that the existing Call-In process was suitable, provided that any Member exercising their right to do so was backed up with a valid reason. However, several Members commented that if an application went to Committee the process was more transparent. Comments were also made in regards to the call-in occurring within 21 days of the application being published and that this should be increased and that it should remain as a single Members calling an application in. Members also raised concern that the proposal could also be trying to fix a problem that didn't exist.

The Head of Planning replied that the comment around probity was a valid point, and that he would take away and consider valid reasons for call-in other than planning reasons. He added that he would give further thought to deadline of 21 days as any extension could prove counter-productive.

Members commented that they understood that efficiencies were needed, however, this should not be at the detriment to the residents of Luton. It was noted that residents also needed a mechanism in place in order to have their say.

### Referral to Full Council

The Head of Planning advised that currently planning applications in the process of being considered at Development Control Committee, could be referred up to Full Council by a Committee Member if the motion was seconded. He stated that there was a risk that if the motion was not agreed at Full Council then the application could be referred back down to the Committee and that the process could be caught in a perpetual loop.

He reminded Members that there was a risk of this happening with the recent determination of the Venue 360 planning application, where a Member enacted this Constitutional ability to propose a motion to have the application referred up to Full Council for approval. The motion was seconded. At Full Council, it could not be agreed to approve the motion, and therefore the application was referred back down to DC Committee. The application was eventually decided at Deployment Control Committee; however it identified a weakness in the current Constitution that needed to be reviewed.

He went on to say that the Constitutional “ambiguity” over which Committee ultimately could make the final decision was an issue that went as far as the Court of Appeal for consideration with the Venue 360 application (and now permission). The legal challenge questioned whether the Council had erred constitutionally in the process followed. Since then there have been two further applications that had been referred to Full Council in the same way. He added that the current referral to Full council was

unique to Luton and that applications should only be referred for exceptional reasons or if the application was controversial rather than on a regular basis . It was proposed;

*'An application can be referred to Full Council when this is motioned by a Member of Development Control Committee and seconded by another Member of DCC. The proposal must then be put to vote and supported by at least 5 Members. Upon referral, Full Council must proceed to determine the application.'*

A Member of the Committee advised that the reason for the current ability to refer to Full Council was a hangover from the old committee system and was a useful tool when an application was controversial and when an application was approved by a slim majority at Committee. .

Members commented that the current number of two Members required to refer an application should remain and not the proposed five. The Senior Solicitor (Planning & Planning) raised concern that the proposed five Members would not work as the Quorum for Development Control was three Members.

Members also enquired if Councillors of Development Control Committee would be permitted to vote on an application at Full Council if they had already done so at Committee as they would be pre-determined.

The Head of Planning replied that the council was still awaiting legal advice from Counsel on the matter. He added that the reason for the proposed change was to help avoid abuse of the system and that there was currently a risk that any application could be referred to Full Council.

### Renaming Committee

It was proposed that the 'Development Control Committee' be renamed 'Development Management Committee' in line with the majority of other Local Authorities, as this best described the purpose and role of the Planning process.

Members supported the proposed to rename the 'Development Control Committee' to 'Development Management Committee'.

**Resolved:** (i) That the above comments and suggestions in regards to the Emergency Scheme of Delegations be noted.

(ii) That the above comments and suggestions in regards to the Constitution be noted.

**(Note: The meeting ended at 8.00 pm)**