

Delegated power	Comment
<p>“The <u>Development Management &amp; Licensing Committee</u> is responsible for and <u>authorised to consider and make determinations</u> (with or without site inspection, subject to statutory and other appropriate consultation <u>and subject to the concurrent exercise of powers by Officers</u> under the Scheme of Delegation (set out in <u>this Part</u> of the Constitution) in the following areas:</p> <p><b>a) Planning</b></p> <p>i) <b><u>Development Management</u></b></p> <ul style="list-style-type: none"> <li>• ....</li> <li>• Agreements regulating the development or use of land</li> <li>• ...</li> <li>• General Planning Control including the determination of planning applications (including, where appropriate, site inspections)...(my emphasis)</li> </ul>	<p>The development management function, which includes both the determination of planning applications and section 106 agreements, is one to be exercised by the Head of Planning and the Development Management Committee.</p>
<p>1.1 HoP Lead has delegated authority for all those functions given to the [DM&amp;L] Committee except planning applications relating to [the Council’s own land, or submitted by a councillor, officer or their immediate family]</p>	<p>The Head of Planning has the same delegated powers as the DM&amp;L Committee with the exception of applications affecting the Council’s own land or land owned by councillors or officers. These exceptions are aimed at ensuring such applications are determined in an open and transparent manner.</p> <p>As the DM&amp;L Committee has powers relating to agreements regulating the development or use of land (section 106 agreements) and determining planning applications, it follows that the Head of Planning has those same powers subject to the limited exceptions and member call-in (see below)</p>
<p>Or which in the opinion of the HoP Lead:</p> <p>1. are of sub-regional or district-wide significance</p>	<p>Implicit is that the Head of Planning’s opinion must be a reasonable one.</p>

<p>2. ought to be determined by the DM Committee”.</p>	<p>It is not clear whether 1 and 2 are intended to be cumulative or alternatives. While it is possible to imply either “and” or “or”, the better view is that they are intended to be alternatives so that the Head of Planning has a wide discretion to refer an application to the DM&amp;L Committee.</p> <p>The use of the word “ought” is synonymous with the word “must”. If interpreted literally, this creates a tension as it in effect takes away the discretion purportedly given to the Head of Planning.</p>
<p>1.2 In the case of planning, listed building, advertisement applications and TPO applications and confirmations, where any written representations are received, including those from a Parish or Town Council, which are contrary to the HoP Lead’s recommendations and where the representations are considered material and relevant planning issues, the HoP Lead shall have delegated authority to determine these only where: a. agreement to issuing a delegated decision has been sought in writing from the Ward Member(s) and, b. no written request (supported by material planning reasons) to call the application to Committee has been received from the Ward Member(s) within the notification period. The notification period is defined as three working days, unless a Ward Member requests an extension of time (of up to 48 hours) and giving good reason for doing so. The notification period commences when the Ward Member has been notified of the request that a delegated decision be made.</p>	<p>Where any representations (which may be as few as one and be from anyone) are received that are contrary to the Head of Planning’s recommendation, the Head of Planning must seek the views of Ward Members before determining the application. This appears to be separate from and in addition to the right of members to request a call-in of an application during the public consultation period. Paragraph 2 appears to conflate the two.</p> <p>Before the obligation to consult Ward Members arises, the representations must raise material and relevant planning considerations. What are relevant planning considerations is a matter of law, the materiality or weight to be given to them is a matter of decision-maker’s planning judgment.</p>
<p>Section 106 Agreements</p> <p>The HoP Lead may:</p>	<p>Government practice guidance is that section 106 agreements should be negotiated as early as possible in the application process to prevent delays in finalising planning applications which are granted subject to the completion of a section 106 agreement see PPG Paragraph: 013 Reference ID: 23b-013-20190315). Also they should be negotiated to enable decisions on planning applications to be</p>

<p>a. authorise the execution of a section 106 agreement where required in advance of the grant of planning permission</p> <p>b. in consultation with the Ward Member(s), vary the terms of a section 106 agreement (or take such other action as necessary) to secure the objectives of the Committee which agreed the 106 agreement.</p>	<p>made within the statutory time limits or a longer period where agreed in writing between the local planning authority and the applicant (PPG Paragraph 017 Reference ID: 23b-017-20190315). Item a. facilitates the completion of a section 106 agreement in advance of an application being considered by the DM&amp;L Committee.</p> <p>Item b. applies to those situations where the DM&amp;L Committee grants planning permission subject to completion of a section 106 agreement containing specified obligations, but during the subsequent negotiations a change of circumstances results in different obligations being agreed. Consultation with the Ward Members may avoid the heads of terms being referred back to the Committee for a re-determination.</p>
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