

**GOVERNANCE AND AUDIT COMMITTEE
29 JANUARY 2013**

**SCHEME OF DELEGATION TO OFFICERS – CERTIFICATES OF LAWFUL USE
Director of Corporate Services – Legal**

1 PURPOSE OF REPORT

- 1.1 This report proposes that power to determine applications for Certificates of Lawful Use made under the Town and Country Planning Act 1990 (“the 1990 Act”) should be delegated to the Chief Officer: Planning and Transport notwithstanding that such an application might attract objections from more than three households and/or organisations.

2 RECOMMENDATION

- 2.1 **That the Scheme of Delegation to Officers set out in Table 1 Part 2 of the Council’s Constitution be amended such that all applications for a Certificate of Lawful Use be determined by the Chief Officer: Planning and Transport (or such other officer within the Planning section as he may in writing delegate such function to).**

3 REASONS FOR RECOMMENDATION

- 3.1 All applications for Certificates of Lawful Use must only be determined by reference to determined facts and the application of the law to those facts. Considerations as to the planning merits of the development in respect of which such an application is made are entirely irrelevant. There is no discretion upon which Members can bring to bear their planning judgement. Not infrequently such applications involve consideration of extensive amounts of evidence and/or legal issues of considerable complexity; in such circumstances it is unrealistic to anticipate that all of the relevant material can be placed before the Planning Committee.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Not to change the Scheme of Delegation as proposed. However, the consequence would be that applications for Certificates of Lawful Use might have to be brought to Planning Committee if a single Member so requested or if there were objections from more than three households and/or organisations.

5 SUPPORTING INFORMATION

- 5.1 The 1990 Act provides for two types of Certificates of Lawful Use. The first, under Section 191, is a Certificate of Lawfulness of Existing Use or Development (often referred to as “CLEUD’S”). Such Certificates apply to development which has already taken place (i.e. there has already been a change of use or operational development has been carried out). The Council **must** (i.e. there is no discretion) if the development is “lawful”. That term (lawful) is defined to mean:-

Unrestricted

- that no enforcement action can be taken in respect of the development, because the period allowed for the Council to take enforcement action has expired or the development did not require planning permission, and
 - the development is not in breach of any existing Enforcement Notice.
- 5.2 The second type of Certificate is a Certificate of Lawfulness of Proposed Use or Development (sometimes referred to as "CLOPUD'S"). An application for a CLOPUD is made by someone who wishes to ascertain whether a proposed development would be lawful. Again, if the proposed development would be lawful the Council **must** issue the Certificate. The criteria for assessing whether a development would be "lawful" are the same as for a CLEUD.
- 5.3 Certificates of Lawful Use applications are frequently supported by the submission of extensive volumes of information endeavouring to demonstrate that a development took place more than four or (depending upon the type of development) ten years ago. The evidence might, for example, take the form of a set of invoices, utility bills or statutory declarations. Such applications also frequently give rise to difficult issues of law. An example is whether a proposed development falls within one of the many specified categories of "Permitted Development". Under the processes agreed between the Borough Solicitor and the Chief Officer: Planning and Transport no application for a Certificate of Lawful Use can be determined without legal advice having been provided.
- 5.4 The Scheme of Delegation to officers as currently drafted provides that all "applications" (a term broad enough to encompass Certificate of Lawful Use applications) have to be brought to Planning Committee if a single Member so requests (supported by a valid "planning reason") or if "valid planning objections" are made by more than three households/organisations. Very often any objections to applications for a Certificate of Lawful Use are made on the basis of an issue of the planning merit of the development, which issues are entirely irrelevant to the determination of the application. Arguably, such objections are not "valid planning objections" or "a valid planning reason", but the matter is not beyond doubt. In one recent instance an application had to be placed on the agenda of the Planning Committee only for the Committee (in accordance with the officer recommendation) to delegate the decision to officers.
- 5.5 The recommendation does not propose any incursion into an area of decision making where Members can exercise their discretion on a matter of planning judgement.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The Borough Solicitor is the author of this report.

Borough Treasurer

- 6.2 There are no financial implications directly arising.

Equalities Impact Assessment

6.3 Not required.

Strategic Risk Management Issues

6.4 None.

Other Officers

6.5 None.

7 CONSULTATION

Principal Groups Consulted

7.1 None.

Method of Consultation

7.2 Not applicable.

Representations Received

7.3 Not applicable.

Background Papers

None.

Contact for Further Information

Alex Jack, Borough Solicitor – 01344 355679

Alex.jack@bracknell-forest.gov.uk

Doc. Ref.

AIJ/f/reports/Governance & Audit – Scheme of Delegation to Officers
Certificates of Lawful Use – 2013