

**REPORT TO THE CONSTITUTIONAL REVIEW COMMITTEE
MEETING OF 7 DECEMBER 2011**

Status: Decision
Title: Planning Decisions for Certificates of Lawfulness
Originator: Adrian Eastwood, Development Control Manager
Where from: Council meeting 14th November
Where to next: Council

1 Purpose of Report

- 1.1 To review decision making process for Certificates of Lawfulness through the development Control service.
- 1.2 To ensure that the Council has a robust, working and efficient decision process.

2 Recommendations:

R 2.1 That the Committee considers the proposed amendments to the Constitution set out at Appendix A to this report and;

Refer any approved changes to the Constitution to Council for approval.

3. Summary of Reasons for the Recommendations

- 3.1 Council delegates to the Development Control Manager unqualified decisions on Certificates of Lawfulness. This is inconsistent with the majority of planning decisions whereby delegated authority is removed subject to criteria at C1.5, Part 3 Responsibility for Functions of the Constitution.
- 3.2 This apparent inconsistency was raised at the Council's 14th November 2011 meeting.
- 3.3 Appendix A reproduces the constitution with suggested inclusion of additional text **including certificates of lawfulness**

4 Impact on Communities

- 4.1 Having what may appear a more open, transparent decision process should help to underline the performance of the Council as the democratically elected Local Authority. There may be an increase in applications being reported to planning committee which may appear less efficient and more time consuming to individual applicants.

5 Key Facts

- 5.1 The Town and Country Planning Act 1990 (as amended) provides at Sections 191 and 192 for anyone to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land

- 5.2 An LPA must determine whether, on the facts of the case and relevant Planning Law, the specified matter is or would be lawful. Courts have held that the relevant test of the evidence on such matters is "the balance of probability".

- 5.3 DoE circular 10/97 at paragraph 8.34 states: *'To minimise bureaucratic procedure in deciding a LDC application, there is no statutory requirement to consult parish or community councils. Although it may be reasonable for the LPA to seek evidence from these sources if there is good reason to believe they possess relevant information about a specific LDC application, they should not be routinely consulted in other cases. However, any views on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant.. planning merits are not considered at any stage in the LDC application or appeal process: there is no "deemed application for planning permission"*

6 Legal Issues

- 6.1 As set out in this report.

7 Resource Issues

- 7.1 Any change to the Constitution will be carried out within existing resources.

8 Equality Impact Assessment Implications/ Outcomes

- 8.1 None in the context of this report.

9 Impact on the Organisation

9.1 No alternative arrangements beyond those presently in existence would be required to implement the recommended changes.

10 Community Safety Implications

10.1 None in the context of this report.

11 Consultation

11.1 None.

12 Options Considered

12.1 If the recommendation is not accepted the Constitution will retain unqualified delegation to the Development Control Manager to take decisions on Certificates of Lawfulness.

13 Background Papers

13.1 The Council's current Constitution.

13.2 DoE Circular 10/97 Enforcing Planning Control (July 1997)

13.3 Minute 457 of Council 21 Feb 2008.

Previous report(s): None.

Information Issued Under Sensitive Issue Procedure: No.

Ward Members Notified: No.

Appendix A : Extract from Constitution C 1.5, Part 3 Responsibility for Functions.

Proposed insertions: **'including certificates of lawfulness'**

C 1.5 Development Control Manager

1. The issue of directions and imposing of conditions restricting applications for planning permission affecting classified roads (other than trunk roads) and unclassified roads required to be made by the Council in accordance with the Harborough Highways Partnership arrangements within the Leicestershire County Council.
2. Approval, subject to adequate estimate provision of grants for Environmental Plant Scheme and the Amenity Plant Scheme which comply with Council Policy.
3. Application delegated for determination:
 - 3.1 The following applications are delegated for determination, subject to 3.2 (a)-(f), where delegation is removed:
 - (a) all applications for planning permission, including applications for the discharge and variation of conditions and requests for minor amendments or applications for lawful use or development (Town and Country Planning act 1990);
 - (b) all applications for listed building consent or conservation area consent (Town and Country Planning Listed Buildings and Conservation Area act 1990);
 - (c) all applications for advertisement consent (Town and Country Planning Control of Advertisement Regulations 1992);
 - (d) all agricultural, telecommunications and other 'prior notifications' (Town and Country Permitted Development Order 1995);
 - (e) all applications for 'hedgerow removal' (Hedgerow Regulations 1997);
 - (f) all applications to undertake works to trees subject to a Tree Preservation Order or within a Conservation Area (Town and Country Planning Trees Regulations 1999);
 - (g) all applications for remedial notices in respect of high hedges (Anti Social Behaviour Act 2003);
 - (h) all applications by other local authorities, for example, Leicestershire County Council and observations on 'County Matters' applications (Town and Country Planning General Regulations 1992);

- (i) all applications for Hazardous Substances Consent (Planning Hazardous Substances Act, 1990).

In addition, Officers may exercise the power, on behalf of the Council, not to determine 'repeat applications' to give determinations in relation to 'permitted development' to confirm intended Tree Preservation Orders, to enter into legal agreements under Section 106 of the Town and Country Planning Act, to exercise the discontinuance of a use of land and the power to serve a building preservation notice and other related actions to secure the integrity of a listed building.

3.2 Circumstances by which delegation to Officers is removed:

- (a) applications **including certificates of lawfulness** where any Member has requested determination of the application by the Planning Committee, using the Request for Call-in form within 28 days of the date of the weekly list on which that application appears. N.B. The request for consideration may be withdrawn at any time, and the application returned to delegated authority (subject to compliance with the other criteria explained below).
- (b) applications **including certificates of lawfulness** where the intended decision would depart from currently adopted development plan policy and/ or Supplementary Planning Guidance and/ or applications where the Development Control Manager considers that determination by the Planning Committee would be appropriate.
- (c) applications **including certificates of lawfulness** to which the following level of counter-representation has been received:
 - i. Five letters representing different households and, in the case of letters of objection, raising valid points relating to planning;
 - ii. a petition of counter representation containing 10 or more signatures.
- (d) applications submitted in which current Members or Officers of the Council, or members of their household and immediate past Officers and members of their household have a beneficial interest (delegation being removed when that interest is declared).
- (e) applications where the intended decision would depart from the advice given by the highway authority.
- (f) applications for 10 or more dwellings and for commercial floor space of 10,000 m² or more.