

1 September 2015

Planning and Licensing Committee

Delegation – Certificates of Lawfulness

Report of: *Monitoring Officer and Head of Support Services*

Wards Affected: *All*

This report is: *Public*

1. Executive Summary

- 1.1 On 24 March 2015 Council received and approved the recommendations in the Modern Planning Service report regarding proposals that focussed on the system of delegation of decisions of planning applications and enforcement cases.
- 1.2 Following recent staff change, the purpose of this report is to seek delegated authority for the Head of Planning and Development to determine applications made for Certificates of Lawfulness made under section 191 and section 192 of the Town and Country Planning Act 1990.

2. Recommendation(s)

- 2.1 That the Head of Planning and Development be granted delegated authority to determine applications for Certificates of Lawfulness.

3. Introduction and Background

- 3.1 Following the promotion and departure of the Head of Legal, at the end of July 2015, a need to re-assess the scheme of delegation has arisen regarding Certificates of Lawfulness.
- 3.2 The Certificate of Lawfulness process (sometimes called Lawful Development Certificates) is a means of determining whether or not planning permission is needed i.e. whether a development or proposed development is permitted development and immune from planning enforcement action.

4. Issue, Options and Analysis of Options

- 4.1 Where a developer wishes to obtain certainty as regards whether or not planning permission is required and to be immune from planning enforcement action, an application can be made to the Council as the local planning authority.
- 4.2 There is no requirement to apply for such a certificate but on occasions the grant of such certificate of lawfulness can be evidentially useful to confirm that a use, operation or activity named in that certificate is lawful for planning control purposes. For example, it can be useful when selling a property to satisfy a potential purchaser as to the planning situation.
- 4.3 However, if anything is outside (or there are material changes which occur outside) the scope of any certificate of lawfulness, the certificate by definition does not grant immunity against enforcement action.
- 4.4 Any certificate of lawfulness granted is not a planning permission. The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.
- 4.5 There are two processes.
- 4.6 An application can be made under section 191 of the Town and Country Planning Act 1990 in respect of an existing use or operation.
- 4.7 An application can be made under section 192 of the Town and Country Planning Act 1990 in respect of a future proposed use or operation.
- 4.8 If granted, a certificate for a proposed, or an existing use, operation or activity will specify (by reference to a plan or drawing) the area of land included in the certificate and describe the precise nature of the use, operation or activity which is lawful. The certificate will give the reason for determining the use or operation to be lawful and specify the date of the application for the certificate.

5. Reasons for the Recommendation

- 5.1 Given that processing of such applications involve the evaluation of facts based on evidence, and that it is for the applicant to prove, delegated authority is sought for the Head of Planning and Development Committee to determine such applications following obtaining relevant legal advice.

6. Consultation

- 6.1 None

7. References to Corporate Plan

- 7.1 This supports the Modern Council theme of the Corporate Plan in making efficiencies and savings while improving service delivery to customers.
- 7.2 The planning service itself supports the Prosperous Borough theme by its promotion of quality development and growth.

8. Implications

Financial Implications

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- 8.1 None directly arising from this report.

Legal Implications

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- 8.2 None directly arising from this report.

9. Background Papers (include their location and identify whether any are exempt or protected by copyright)

None

10. Appendices to this report

None

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