

CABINET

11 September 2013

FUTURE ARRANGEMENTS FOR THE DELIVERY OF DEVELOPMENT
MANAGEMENT FUNCTIONS IN THE SOUTH DOWNS NATIONAL PARK

REPORT OF ASSISTANT DIRECTOR BUILT ENVIRONMENT

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RECENT REFERENCES:

[CAB2024](#) – 9 July 2010 – South Downs National Park Delegation of Planning Decisions to Local Authorities.

EXECUTIVE SUMMARY:

In 2010 the Council agreed to provide a development management service for the South Downs National Park Authority, for the part of the District within the National Park boundary. This was in preparation for the National Park Authority becoming the local planning authority in April 2011.

In August 2011, the arrangements for the funding and delivery of the service were formalised when the Council and the National Park Authority signed an agreement under Section 101 of the Local Government Act 1972. The agreement was for a period of 3 years (April 2011 – March 2014) with provision that the delegation arrangements could continue for a further period(s) of up to 3 years if both parties were agreeable to an extension. If no such extension is agreed, the National Park Authority would have to provide the development management service itself from April 2014.

Whilst the National Park Authority has indicated it is favourably disposed to continuing the delegation arrangements in Winchester and other parts of the Park, it will be seeking new agreements rather than simply extending the existing s101 agreement for 3 years i.e. to March 2017. However, it may be necessary for the existing agreement to be extended for up to a year (March 2015) in order to provide sufficient opportunity for new arrangements to be put in place which will take the

period of delegation up to the end of March 2017.

This Report sets out the proposals in more detail and seeks authority to extend the existing agreement for a period of up to a year and to enter into a new agreement to continue the delegated arrangements up to March 2017.

RECOMMENDATIONS:

TO CABINET:

- 1 That the Head of Legal Services be authorised to:
 - (a) agree the extension of the existing arrangements for the delivery of a development management service on behalf of the South Downs National Park Authority, as set out in the Section 101 agreement dated 4 August 2011, for a further period of up to one year if necessary and;
 - (b) enter into a new agreement for the delivery of development management services on behalf of the National Park Authority up to March 2017 subject to the Assistant Director Built Environment (in consultation with the Chief Finance Officer and Portfolio Holder Built Environment) being able to agree satisfactory funding and operational arrangements with the National Park Authority, and subject also to the inclusion of a notice period for termination of the service of 12 months.

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DETAIL:

1 Introduction

- 1.1 On 1 April 2011, the South Downs National Park Authority became the local planning authority for the 40% of the District which lies in the National Park. Prior to this date the Council (and most other local authorities in the Park) had reached agreement with the National Park Authority (NPA) to provide development management services on its behalf. The detailed operational and funding arrangements were formalised in a Section 101 Local Government Act 1972 agreement, which was completed in August 2011.
- 1.2 The agreement runs for 3 years, expiring at the end of March 2014, although the agreement includes provisions which allow the Council and the NPA to agree to an extension for up to 3 years i.e. March 2017. This report considers the merits of continuing the current arrangements beyond March next year.
- 1.3 The NPA has indicated that, in principle, it would favour a continuation of the delegation arrangements for a further period of 3 years across the Park, albeit they would not be prepared to simply agree to an extension of the existing s101 agreements through to 2017. They are seeking new agreements with those councils delivering their development management service, with changes likely to the funding and operational arrangements. The NPA is hoping to make a formal decision regarding the future provision of its development management services in October 2013. Their decision will be influenced by any councils that decide not to continue with delegation arrangements after March 2014. For example, if one or more of the larger councils decided to stop providing the service the NPA may be more inclined to take development management back in-house across the whole of its area, rather than continuing delegation arrangements with fewer authorities.
- 1.4 Given the predominantly positive experience of the arrangements which came into effect in April 2011, and the benefits to the Council and customers outlined above and set out in the report, it is recommended that the Council continues to provide the development management service on behalf of the National Park Authority for a further period of 3 years (April 2014 – March 2017) subject to being able to agree appropriate funding and operational

arrangements through the completion of a new agreement. The delegation arrangements can only continue if the National Park Authority agrees to it.

- 1.5 In order to allow time for the detailed negotiations and terms of the new agreement to be finalised, the NPA is proposing a short extension of the existing arrangements, of up to one year (i.e. to no later than March 2015).
2. Current Position.
 - 2.1 Since April 2011 the Council has provided a comprehensive development management service for the NPA which includes processing planning and other applications, appeals, compliance (discharging planning conditions and obligations) and enforcement. Under the delegation arrangements, the Council decides most applications, with the NPA recovering and determining any proposals it considers significant in National Park terms. As part of a restructuring of Development Management in 2012, a team was formed which deals with work in the Park.
 - 2.2 Whilst the Park constitutes 40% of the District, it is mainly rural in nature and relatively few major development proposals come forward in this area. However, it still generates significant levels of work and last year (12/13) Development Management dealt with some 680 cases when pre-application, trees and compliance applications are included. Only 13 cases (c. 2%) were called in and decided by the NPA itself. In the context of the whole District, the Park accounts for about 23% of the total number of applications handled by the Council.
 - 2.3 From the outset, the Council and NPA developed a good working relationship which meant that the transition from the pre to post April 2011 position was relatively smooth and customers experienced little by way of disruption to their planning service. There is a high level of coordination between the authorities and the NPA provides a dedicated Link Officer for Winchester who visits the Council Offices to liaise with the planning team on a weekly basis.
 - 2.4 Notwithstanding initial problems associated with the introduction of the NPA's own planning application system in April last year, it is considered that the current arrangements are working well and that the Council is delivering a good service for its customers and the NPA.
3. Benefits of Extending the Delegation Arrangements
 - 3.1 It is considered that there are a number of advantages for the Council, customers and the NPA itself in agreeing an extension to the current arrangements.
 - 3.2 As referred to at 2.2 above, most of planning decisions made within the part of the District which is situated in the National Park are taken by the Council (either by officers under the Winchester scheme of delegation or Planning Development Control Committee) rather than the NPA directly (only about 2% of cases in 12/13). This means that the vast majority are being dealt with in

Winchester, which helps to reinforce local democracy for the benefit of residents, businesses and parishes, with only the most significant schemes being decided by the NPA itself.

- 3.3 Retaining decision making can also help to ensure planning outcomes are aligned, as far as possible, within the framework of national and local planning policy, with the delivery of wider corporate objectives such as the work being carried out by New Homes Delivery Team and the drive to support rural businesses and tourism.
- 3.4 If the existing arrangements are discontinued after March 2014, the Council's role in decision making in 40% of the District will be substantially diminished and all planning applications and enforcement matters will be dealt with directly by the NPA.
- 3.5 However, it is also considered that continuing with the arrangement is beneficial for the NPA. Winchester officers have a detailed understanding of the profile of district within the Park boundary and its planning officers can call directly on the knowledge and expertise of other teams within the Council (Landscape, Tourism, Economic Development, Historic Environment *et al*) which has often been built up over a number of years and can inform and add value to the planning decisions being made. This means that the Development Management Team is well placed to deliver a high quality service which is able to respond to customer needs, as well as ensuring the highest level of protection for the National Park.
- 3.6 Under the existing agreement, the NPA funds the provision of the Council's development management service in the Park area. In Year one (11/12), the figure was based on actual full costs, taking account of information from earlier years. Whilst the NPA committed to meeting the Council's full costs for the first year, their aim was for all authorities to achieve efficiency savings and to seek harmonisation of costs moving forwards across the whole National Park. This would be reflected in payments to councils in subsequent years.
- 3.7 In line with the NPA's stated intention, it has generally reduced its funding for councils operating the delegated scheme in Years 2 and 3 and Winchester has seen its annual funding reduced from £554k (11/12) to £490k (13/14). However, whilst it has not been possible for the Council to significantly reduce its costs for providing the service since the arrangement began in 2011, the settlements agreed by the NPA have been considered acceptable giving consideration to the Government funding settlements and the average cost of the service provision across the park.
- 3.8 If the current arrangements were discontinued from April 2014 some of the costs incurred for the development management service would be transferred to the NPA from the Council (e.g. staff resources). However, not all of these costs are likely to result in cashable savings as they will be difficult to save in the short to medium term. For example part posts and Overhead costs could not be turned into an immediate cashable saving.

- 3.9 The funding settlements for a possible extension of up to one year (2014/15) and further three year agreement will be subject to negotiation with the NPA. The NPA has indicated that it will be required to continue looking for annual reductions to the current fee in light of the continued pressures from Government funding settlements

4 Legal Issues

- 4.1 Section 63(5) of the Environment Act 1995 and Schedule 7 of that Act (paragraph 13(1) provides that Sections 101 to 106 of the Local Government Act 1972 are to have effect as if the National Park Authority were a local authority for the purpose of those sections. Section 101 allows a local authority (i.e. for this purpose the National Park Authority) to arrange for the discharge of any of its functions by a committee, sub-committee or officer or the authority, or by another other local authority (i.e. in this case the City Council).
- 4.2 Under Section 9D of the Local Government Act 2000, any function of a local authority which is not specified in regulations is to be the responsibility of the executive (i.e. Cabinet) of the local authority. The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 make provision for functions that cannot be the responsibility of the executive (including discharge of planning functions such as dealing with planning applications and planning enforcement), as well as functions that may the responsibility of the executive, and functions which may not be the sole responsibility of the executive.
- 4.3 The entering into of an agency agreement under Section 101 (as opposed to the discharge of the functions which are the subject of that agency agreement) is not a function which is specified under the Regulations, and therefore the decision on whether or not to enter into the delegation arrangements is one for Cabinet. Decisions on planning applications and other matters which are exercised by the City Council pursuant to the Section 101 agreement will have to be made by the Planning Development Control Committee (rather than Cabinet) in the same way as applications within the District but outside the Park.

5 Conclusions

- 5.1 As explained above there are a number of benefits with the existing arrangement which allows the Council to make most planning decisions in the 40% of the District which falls within National Park. The agreement helps to reinforce local democracy, align planning determinations with wider corporate objectives and makes good financial sense for the Council. Discontinuing the arrangement is not an attractive or logical option and it is recommended therefore that the Council agrees to seek an extension to the current arrangements for a period of 3 years (April 2014 – March 2017) subject to being able to agree suitable funding and operational arrangements with the NPA.

OTHER CONSIDERATIONS:

6 SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS (RELEVANCE TO):

- 6.1 This report is relevant to the Strategy's aims (and those of the corresponding change plans) of maintaining a prosperous economy and in particular supporting and promoting the District's natural environment, exploiting opportunities that the South Downs National Park brings and developing the rural economy. Furthermore it relates to safeguarding our High Quality Environment and in particular protecting and improving landscapes and townscapes and ensuring new development is appropriate and sensitive to the local environment.

7 RESOURCE IMPLICATIONS:

- 7.1 The funding settlements for a possible extension of up to one year (2014/15) and further agreement up to March 2017 will be subject to negotiation with the NPA. The NPA has indicated that it will be required to continue looking for annual reductions to the current fee of £490k (2013/14) in light of the continued pressures from Government funding settlements.
- 7.2 Giving consideration to the difficulties in achieving cashable savings should the arrangements be discontinued (see 3.8 above), and the non-financial benefits of the Council continuing to provide the development management service, it is recommended that (subject to negotiation) the current arrangements are extended beyond 2013/14.
- 7.3 It will be necessary to review the current level of service provision to determine whether there are potential savings that can be made to offset any future reductions to the annual fee received from the NPA.

8 RISK MANAGEMENT ISSUES

- 8.1 Deciding not to agree an extension to the delegation arrangements will mean that the Council will have no control over planning decisions in 40% of the District. This could result in decisions being made which the Council does not support, albeit under the existing agreement the National Park Authority can itself call in and determine any applications it considers significant in National Park terms. To date this right to call in applications has only been exercised in a relatively small number of cases.
- 8.2 As outlined above, continuing with the arrangement will mean that the Council will provide and resource a development management service with the level of funding it receives each year determined by the National Park Authority. However, it is still very likely that this funding arrangement will offer greater benefit than relinquishing the service. The arrangements will include a notice period of 12 months so the Council could decide to stop providing the service before March 2017 if continued satisfactory funding cannot be agreed in the future.

BACKGROUND DOCUMENTS:

Agency agreement relating to the provision of planning services in the City of Winchester – Section 101 of the Local Government Act 1972 dated 4th August 2011.

Service Level Agreement identifying performance management measures and procedure to be followed from 1st April 2013.

APPENDICES:

None