

Appendix B

**DATE**

**EAST LINDSEY DISTRICT COUNCIL**

**AND**

**HORNCASTLE TOWN COUNCIL**

**AGREEMENT ON DELEGATED FUNCTIONS**

**THIS AGREEMENT** is made on the .....day of .....2018

BETWEEN

**EAST LINDSEY DISTRICT COUNCIL** of Tedder Hall, Manby Park, Manby,  
Louth, LN11 8UP

And

**HORNCASTLE TOWN COUNCIL** of Stanhope Hall, Horncastle.

1. This agreement consists of five sections as follows;

- a. Definition of terms
- b. Statutory powers
- c. Terms of agreement
- d. Schedule 1 – the extent of the delegation
- e. Schedule 2 – processes for dealing with applications

**a. Definition of Terms**

1. To avoid unnecessary repetition the following terms will be defined as follows;

- a. "The District Council" means East Lindsey District Council
- b. "The Town Council" means Horncastle Town Council
- c. "The Planning Officer" means The Service Manager – Planning
- d. "LPA" means local planning authority
- e. "The Planning Act" means the Town and Country Planning Act 1990 as amended
- f. "The 1972 Act" means the Local Government Act 1972
- g. "The 2001 Act" means the Local Government Act 2001
- h. "The Clerk" means the Clerk to the Town Council
- i. "Day" means a normal calendar day except where the term "working days" is used in which case a day means Monday to Friday excluding bank holidays.

**b. Statutory powers**

1. The District Council is the LPA for its area for the purpose of the Planning Act.
2. The Town Council is the town council for its area as constituted by the 1972 Act.

## Appendix B

3. This agreement is entered into pursuant to Section 101 of the 1972 Act and Section 2 of the 2001 Act (which enables a local authority to arrange for the discharge of any of its functions by another local authority)

### **c. Terms of the Agreement**

1. The District Council as LPA delegates its powers to determine planning applications for development as defined in the Planning Act of the type set out in Schedule 1 to this Agreement.
2. The Town Council agrees to exercise the delegated powers referred to in Clause 6 hereof in accordance with the provisions set out in Schedule 2 hereof which shall be adhered to by the District Council and Town Council.
3. Despite the powers of the Town Council under the 1972 Act, the Town Council shall not seek to delegate any decision on a planning application beyond that set out in Schedule 2 hereof beyond the Town Council itself, its Planning Committee constituted as described in Schedule 2 or should it wish to the Planning Officer.
4. This Agreement shall take effect on ..... and shall expire on..... .
5. By the [two months before the expiry date of this agreement] the District Council shall give notice to the Town Council as to whether, and if so on what terms, a further delegation arrangement shall be offered and if a renewal is offered the Town Council shall notify the District Council by [date one month before the expiry of this Agreement] of its acceptance or otherwise of such renewal. Any terms may be renegotiated during the 2 month period to the agreement of both parties.
6. Notwithstanding the above provisions, either party may terminate this Agreement by giving the other party one months' notice in writing.
7. For formal service purposes notice under this Agreement shall be served on the District Council via the Planning Officer and on the Town Council via the Clerk.

Appendix B

**Page for common seal and signatures**

## **SCHEDULE 1**

### **PLANNING APPLICATIONS DELEGATED TO THE TOWN COUNCIL**

- a. All minor householder planning applications.
- b. All advertisements.
- c. Change of use applications.

Where an application for listed building consent is required which falls into the above categories both the listed building consent application and any accompanying planning application will be determined by the District Council.

Householder applications are defined as those within the curtilage of a dwelling house which require an application for planning permission and do not entail a change of use.

Included in householder developments are extensions, conservatories, loft conversions, dormer windows, alterations to garages, car ports, outbuildings, swimming pools, walls, fences, domestic vehicular accesses including footway crossovers, porches and satellite dishes.

Excluded from householder developments are applications relating to any work to two or more flats, applications to change the number of dwellings (flat conversions or building a separate house in the garden). Applications for housing on land outside the curtilage of another dwelling.

## **SCHEDULE 2**

### **PROCESSES**

#### **Notification process**

1. The District Council shall send to the Town Council a copy of a valid, relevant application falling into Schedule 1 within 5 days of it completing the validation process.
2. The District Council will inform the Town Council as soon as it is known to them if a relevant application falling into Schedule 1 should be determined by the District Council and the reason why.
3. The Town Council will inform the District Council as soon as it is known to them if they do not wish to determine a relevant application falling into Schedule 1 and the reason why.
4. No application shall be considered until the Town Council has the Planning Officer`s report which shall in all cases contain a recommendation.
5. The Town Council shall ensure that all meetings are scheduled to comply with all the statutory timescales and government targets xxxxx they should not be set as the same day or time as the District Council`s Planning Committee meeting.

#### **Decision making process**

6. The planning applications to be determined shall be the first items to be considered on the agenda for any meeting arranged, after any statutory requirements have been complied with unless there are any other items of urgent business.
7. The District Council will appoint an officer or representative authorised by The Planning Officer to attend the meeting as a formal adviser on planning matters alone and the Town Council should not determine any application without the Planning Officer`s representative being present.
8. All decisions must be made in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. All due consideration must be given to all relevant planning policies and guidance including the National Planning Policy Framework.
9. The Town Council must give reasons for its decisions regardless of whether there is agreement with the officer recommendation or not. If a

## Appendix B

decision is made contrary to The Planning Officer's recommendation, full and detailed reasons should be given for the departure.

10. All decisions shall be made solely on material planning considerations. The Town Council should be apprised of planning guidance on material planning considerations and also any updates resulting from appeals and legal cases.
11. To enable formal decision notices to be issued in a timely manner, the Clerk shall notify the District Council of the Town Council's decision by email by 12 noon on the day following the meeting. The notification must include the full reasons for the decision and the names of the Town Council members who made the decision.
12. The Town Council shall comply with the District Council's scheme to allow public speaking on planning applications. Members of the public should not be involved in any speaking at the meeting outside of the public speaking scheme.
13. The meetings of the Town Council at which planning applications are determined shall be fully open to the press and public who shall not be excluded from such meeting unless quite exceptionally the meeting believes that it has no alternative but to pass a formal exclusion resolution in accordance with the Public Bodies (Admission to Meetings) Act 1960 or any other relevant legislation which is in force at that time. All representations and decisions shall be minuted so as to provide an accurate record of the meeting.
14. The Town Council must ensure it complies with the District Council's protocols on probity in planning and any other codes or practise or protocols which are in force at any time in relation to planning. This shall include the Members Code of Conduct and the recording of any members' interests to accord with the requirement to act openly and with transparency.
15. All councillors who sit on the Town Council's Planning Committee or decide planning applications shall have received planning training prior to participating in the making of any decision on a planning application. This training will be organised by the District Council on a yearly basis and it shall be the Town Council's responsibility to ensure that only trained members take part in the decision making process.:-

### **Appeals**

16. Legally any appeal against a decision on a planning application as made by the Town Council will have to be contested by the District Council. In

## Appendix B

order for the views of the Town Council to be fully reflected in the appeal the following principles shall apply.

- a. The Planning Officer or their representative shall provide planning support in defending an appeal.
- b. At any public inquiry or hearing the Town Council shall appoint a representative to appear as a planning witness and to support the Town Council`s decision.
- c. Where an appeal is dealt with by written representations the Town Council`s statement shall be provided by the Planning Officer or their representative. Such appeals are dealt with on a very strict timetable but the Planning Officer shall in all cases seek to give the Town Council at least five clear days in which to comment on the initial draft statement.
- d. It should be noted that where an appeal is dealt with through the Householder Appeals Service no statements are sent, and only the consultation responses, officer report and decision notice will be sent to the Inspectorate.
- e. If the Town Council make a decision contrary to the officer advice, or where officer support is withdrawn for any reason and the Town Council make an erroneous decision then they shall be liable to pay any costs awarded against the District Council if it is found that the Town Council has acted unreasonably in reaching their decision. An award of costs can be made even if the appeal is dismissed; the District Council will provide assistance in any statement required in defence of a costs application.

### **Scrutiny**

17. This Agreement and the performance of the Town Council will be subject to scrutiny by the District Council`s Overview Committee as part of the monitoring of planning performance.
18. This Agreement will be reviewed at the end of a 12 month period.

### **Termination of this Agreement**

19. Both the Town Council and the District Council can terminate this agreement by giving in writing one months` notice.