

## COUNCIL – 23 OCTOBER 2018

### PART I – DELEGATED

#### 4. PROPOSED AMENDMENTS TO THE SCHEME OF DELEGATION (DCES)

##### 1 Summary

- 1.1 To outline proposals to recommend to Council to amend the Planning Committee's remit and the Scheme of Delegation to enable the Local Planning Authority to determine requests for the removal of a public call box or public call services from a site in accordance with the requirements of the Communications Act 2003.

##### 2 Details

- 2.1 It is proposed to amend the remit of the Planning Committee and the Scheme of Delegation, in order to enable the Local Planning Authority to consider and determine requests submitted for the removal of a Public Call Boxes (PCBs) and Call Box Services (CBS) from a site.
- 2.2 In 2016 Ofcom published a Direction setting out the procedures that must be followed for the complete removal of PCBs and CBS. These rules come into play when BT wants to remove the one and only call box from a site (which includes a 400m walking distance surrounding a call box). BT are required to display a notice on the call box informing the public of the proposed change and advising that any representations should be made to the Local Authority, by 42 days after the day on which the notice is first displayed.
- 2.3 BT is also required to give written notice to the Local Authority of its proposed removal. The Local Authority is required to bring this to the attention of such persons as it considers appropriate and invite comments on the proposal within a specified time period. Such persons may include other local public bodies, including Parish or Community Councils.
- 2.4 The Local Authority is required to consider any responses received to the consultation, in deciding whether to consent or object to the proposal. It must be satisfied that its decision is in accordance with the items set out at **Appendix 1**.
- 2.5 Having considered the responses the Local Authority must publish its draft decision in the form of a notification which should set out the draft decision, the effect of the draft decision and the reasons. The draft decision must be issued to the Secretary of State, and must include a date by which representations regarding the decision should be made.
- 2.6 Having considered responses to the draft decision, the Local Authority must publish its decision in the form of a Final Notification. This should set out the decision, the effect of the decision and the reasons for the decision, confirmation that the decision complies with the Communications Act, and should be sent to the Secretary of State.
- 2.7 In order to enable the Local Authority to complete this process and issue a Draft Decision and Final Notification, it is recommended that the remit of the Planning Committee be amended in Part 3 of the Constitution (Responsibility for Functions) for Planning Committee (starting at p3/7) to add in the left hand column under Functions the words:

*Power to remove a Public Call Box (PCB) and/or Public Call Services (PCS) from a Site.*

And in the right hand column under 'Enactment' the words

*Communications Act 2003*

- 2.8 It is likely that such decisions need to be delegated to enable decisions to be made within timeframes set out, it is also recommended that the process should be delegated to the Director of Community and Environmental Services. The Scheme of Delegation under Part 3 of the constitution, 'Responsibility for Functions 11. Director of Community and Environmental Services' shall be amended to include a new paragraph 11.5.21:

*To consent or object to requests for the removal of a Public Call Box (PCB) and/or Call Box Services (CBS) made pursuant to the Communications Act 2003.*

### **3 Options and Reasons for Recommendations**

- 3.1 To note and agree the proposed amendments to enable the Local Authority to issue decisions on these submissions, to ensure due consideration can be given to the potential impacts of the removal of these services in accordance with Ofcom guidance.

### **4 Policy/Budget Reference and Implications**

- 4.1 The recommendations in this report are within the Council's agreed budgets. The purpose of the proposal is to enable the Local Planning Authority to comply with the requirements of the Communications Act 2003.

### **5 Financial, Staffing, Environmental, Community Safety, Public Health, Customer Services Centre, Communications & Website, Health & Safety Implications**

- 5.1 None specific.

### **6 Legal Implications**

- 6.1 The recommendation would ensure the Local Authority is able to comply with the requirements of the Communications Act.

### **7 Equal Opportunities Implications**

- 7.1 Relevance Test

Has a relevance test been completed for Equality Impact?	No
Did the relevance test conclude a full impact assessment was required?	No

## 8 Risk Management

- 8.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.
- 8.2 The subject of this report is covered by the Regulatory Service plan. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this/these plan(s).
- 8.3 There are no risks to the Council in agreeing the recommendation.
- 8.4 The following table gives the risks that would exist if the recommendation is rejected, together with a scored assessment of their impact and likelihood:

Description of Risk		Impact	Likelihood
1	If an application for the removal of a PCB or CBS is received and the LPA is not able to respond within 90 days, BT is able to proceed with the removal.	II	D

- 8.5 The above risks are plotted on the matrix below depending on the scored assessments of impact and likelihood, detailed definitions of which are included in the risk management strategy. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood are plotted in the shaded area of the matrix. The remaining risks require a treatment plan.

Likelihood	A						Impact	Likelihood
	B						V = Catastrophic	A = >98%
	C						IV = Critical	B = 75% - 97%
	D		1				III = Significant	C = 50% - 74%
	E						II = Marginal	D = 25% - 49%
	F						I = Negligible	E = 3% - 24%
			I	II	III	IV	V	F = <2%
<b>Impact</b>								

- 8.6 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks

## 9 Recommendation to Council

- 9.1 That Members agree the amendments to the Responsibility of Functions for the Planning Committee and to the amendments to Scheme of Delegation to Officers and that the constitution be amended accordingly.

Report prepared by: Adam Ralton, Development Management Team Leader

### **Background Papers**

Communications Act 2003

Ofcom Guidance on procedures for the removal of public call boxes

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/28507/removals.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/28507/removals.pdf)

Ofcom Removing Public Call Boxes: a guide to the rules

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0035/47879/removing\\_callboxes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0035/47879/removing_callboxes.pdf)

Public Callbox Direction

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/41650/callboxdirection.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/41650/callboxdirection.pdf)

### **APPENDICES / ATTACHMENTS**

#### **Appendix 1**

7.2 In deciding whether to consent or object to the proposal, the Relevant Public Body must be satisfied that its decision is:

- Objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- Not such as to discriminate unduly against particular persons or against a particular description of persons;
- Proportionate to what it is intended to achieve; and
- In relation to what it is intended to achieve, transparent.

7.3 The Relevant Public Body must also be satisfied that it acted in accordance with the six Community requirements set out in section 4 of the Communications Act 2003 ('the Act'). These are:

- To promote competition in the provision of electronic communications networks and services, associated services and facilities and the supply of directories;
- To contribute to the development of the European internal market;
- To promote the interests of all persons who are citizens of the European Union;
- Not to favour one form of, or means of, providing electronic communications networks or services i.e. to be technology neutral;
- To encourage network access and service interoperability for the purpose of securing competition in the electronic communication networks and services markets and the maximum benefit for customers of communications providers; and
- To encourage compliance with standards necessary for facilitating service interoperability and securing freedom of choice for the customers of communications providers.