

DELEGATED

AGENDA No.

**REPORT TO EXECUTIVE
SCRUTINY COMMITTEE**

1 JUNE 2010

**REPORT OF THE CORPORATE
DIRECTOR OF DEVELOPMENT
AND NEIGHBOURHOOD
SERVICES**

ALTERATION TO THE SCHEME OF DELEGATION

1. As Members will be aware the Government has set out an agenda for the delivery of a planning service appropriate for the 21st century through the Planning and Compulsory Purchase Act 2004, the Barker Review of Land Use Planning, and laterally, the Government's response to the Killian/Pretty Review. The delivery of an expedient customer responsive service plays an important part in CPA rankings
2. As part of the whole service review, an extended scheme of delegation was introduced in January 2004, and improvements made to Planning Committee such as a change in venue and the introduction of public speaking. In addition there was a reduction in the need for site visits by making greater use of IT display technology and digital photographs.
3. A further review of the scheme of delegation was carried out in 2007/2008 when following referral to the Planning Committee, the recommendations were considered by Cabinet and Full Council. The agreed scheme of delegation is attached at Appendix 1. It was also agreed that the Executive Scrutiny Committee and an appropriate Select Committee be requested to consider the inclusion of a review of the new scheme of delegation, one year after its implementation, within the Scrutiny Work Programme. The views of Planning Committee were sought and have been incorporated into this report.
4. This report therefore examines both issues and proposes alterations to the scheme of delegation and signing off to make it more streamlined and efficient,

RECOMMENDATIONS

That the proposed changes to the scheme of delegation be agreed and incorporated into the Council's Constitution

PURPOSE

To outline proposals for a revised scheme of delegation for consideration by the Executive Scrutiny Committee.

DELEGATION

5. Planning Committee, at its meeting held on 14th November 2007, considered a number of reforms that could be introduced to improve the quality of the service delivered and Cabinet was invited to comment on the content of the proposed revised scheme of delegation prior to Full Council determining the matter. Included as part of these proposals were a number of reforms including:-
 - Suggested criteria for determining applications that warranted site visits,
 - The number of objections which trigger an application to committee for consideration to remain at 5.
 - The requirement in the current scheme for there to be a matter of 'fundamental principle or precedent' to be identified to allow an application to be referred to Planning Committee be amended to include "an issue of fundamental principle shall be taken to involve the interpretation of a matter of policy which could undermine the purpose and objectives of the Local Plan or Local Development Framework, and where a member can demonstrate that the proposal would have such a prejudicial impact or effect on the area or Borough or its residents as to warrant determination by Planning Committee"
6. Full Council accepted the changes in January 2008. The revised scheme of delegation which was introduced then is attached at **Appendix 1**
7. An appropriate scheme of delegation allows members to devote sufficient time to more complex and contentious applications. However Members of Planning Committee will also appreciate that the amount of time taken to determine an application is not always proportionate to the size of the application. It is often the smaller applications which prove more contentious despite the material planning considerations being minimal
8. Whilst performance has improved in the intervening period, there is no room for complacency and the scheme of delegation requires re-examination. Since the introduction of the revised scheme there have been 4 applications referred to the Planning Committee by Members using the written request process. There has been one application requested by a Member using the written request process which was declined as not meeting the criteria. In the last Municipal Year 2009/2010 there were 6 planning applications deferred at the Planning Committee meeting and one application deferred for a site visit. A total of 73 applications were considered by the Planning Committee during this period of which 68 applications were decided in accordance with the officer recommendation and 5 applications were decided against the officer recommendation.
9. The suggested revised scheme remains simple and makes it clear what applications cannot be determined by Officers i.e. the exceptions to the scheme of delegation.
10. The Planning Committee considered the issues for consideration at the meeting on 21st April 2010 and made the following comments:
 - i) Identify number of applications where additional neighbour letters have resulted from neighbour dispute leading to Committee decision and if not significant omit recommendation for restriction on referral to Planning Committee from publicity.

The period since January 2008 till 21st April has been examined and only 5 applications for domestic extensions were reported to Planning Committee as there were more than 5 individual letters of response. Consequently it is proposed that there is no change in the triggers from publicising planning applications

ii) Need for wider consultation.

Members expressed a desire for wider consultation on planning applications but that is not within the scope of the scheme of delegation. However officers will reassess the criteria for publicising planning applications to ensure it is sound and robust

iii) Include requirement for Planning Services Officer/Spouse/Partner applications to be referred to Planning Committee

This criteria has been added

11. Issues for consideration

The following issues have arisen in operating the scheme of delegation

11 .Letters of response

An 'individual letter of response' shall be taken to constitute a letter within which it is stated that an individual or group of people, whether privately or in any other capacity object or support a proposal for reasons set out in a letter.

12 Whilst publicity is given to the process of how the public are able to have a planning application referred to the Planning Committee by achieving a specified number of letters of representations contrary to the officer recommendation, a number of issues arise which require to be considered to avoid the process being open to misuse

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13 There is no limitation on where the individuals making representations must reside, the threshold for objections can be achieved by relatives or friends making representation who are not affected by the development. As applications are also subject to Press and Site Notices, representations may be received from pedestrians, motorists, train or bus passengers who are travelling through the Borough which would need to be taken into account.

Therefore it is recommended that the situation remains unchanged

14 Should responses from the same property count as towards the trigger figure or as a single letter?

As Members will be aware it is not the number of representations that are given weight by the decision maker in determining a planning application but the planning merits of the representation. The threshold was introduced to provide a sensible control and prevent applications being referred to the Planning Committee unnecessarily. Under the present scheme an anomaly is where it would be possible if there were six occupants of a property to each make representations and an application would need to be referred to

the Planning Committee. Whereas representations submitted from a property with less than six occupiers would be unable to succeed in having an application referred to the Planning Committee unless other representations were also received.

While it would appear logical to try and address this anomaly, it is considered that this would result in too tight a restriction on what could be considered as an individual letter of representation.

It is recommended that the status quo is maintained

15. The use of Email is quite prevalent but an Email address is capable of being disguised and does not clearly identify the individual responding or where they reside. Therefore should Emails be required to clearly contain a “real” name and identifiable address to be considered an “individual letter.” The advice from the Local Government Ombudsman is that any correspondence on planning issues if it is to be meaningfully considered should include a real name and address and the author of an Email without a proper name and address be advised of the need to provide one.

It is recommended that Emails should include a real name and address and the author of an Email without a proper name and address be advised of the need to provide on

Council Developments

- 16 For Council developments, “minor” development is classed as extensions of up to and including 100m² of floorspace, disabled access facilities, fencing, storage buildings and renewal of consents. This is a very low threshold and has resulted in applications being reported to Planning Committee for single CCTV cameras

It is recommended that the definition and thresholds should be raised and delegated development is classed as buildings up to and including 500m², of floorspace, Advertisements, CCTV systems, and any structures required to be erected to enable the Council to fulfil its responsibility and function of Community Safety

Council Member spouse or Partner, Member of Council Staff Spouse or Partner

- 17 In terms of applications not currently delegated are those cases which involve development on land owned, or in which an interest is held, by a Council Member (or their spouse/partner) or by any member of the Council staff (or their spouse/partner) as far as is reasonably practicable.

Experience of operating the scheme of delegation has demonstrated that there is a need for a clearer definition of cases which need to be referred to Planning Committee. The Council has in the region of 8,000 employees and very few planning applications by Council employees have been controversial or justified in being referred to the Planning Committee.

It is considered that the requirement for this category of planning application to be referred to Planning Committee is limited to:-

An Objection representation has been received to the planning application

Those cases where the Officer recommendation is for approval but it constitutes a departure from the Development Plan

Those cases which appear to the Director of Development and Neighbourhood Services or the Head of Planning to be extraordinary when viewed against established policy guidelines, or warrant consideration by Planning Committee;

Where the applicant is a Member of Staff of Planning Services or their spouse or partner

- 18 The revised scheme of delegation still provides for any Member to refer a delegated application to Committee subject to providing a written justification by letter or email on the proforma and to satisfying the agreed criteria to be reported to Planning Committee, that it is an issue of fundamental principle or an issue of precedent, both of which are defined within the Appendix of definition attached to the scheme of delegation. This request should be submitted to the Head of Planning within 21 days of publication of the details of the application. The Head of Planning in the first instance will arbitrate on the interpretation of the scheme and thereafter the Director of Development and Neighbourhood Services, in consultation with the Director of Law and Democracy (or nominee) if there are any challenges to this decision. The flow chart at **Appendix 1** outlines this procedure.
- 19 It is proposed therefore that delegated authority continues to be granted to Officers to process and make decisions on all applications subject to the following exceptions:-
- a.) those cases which appear to the Director of Development and Neighbourhood Services or the Head of Planning to be extraordinary when viewed against established policy guidelines, or warrant consideration by Planning Committee;
 - b.) development proposed by the Council itself except those of a nature as detailed in Appendix 3- definitions associated with the operation of the scheme of delegation;
 - c.) those cases where the Officer recommendation is for approval but it constitutes a departure from the Development Plan;
 - d.) those cases where there are more than 5 letters/emails(with name and address) by way of response which are contrary to the recommendation of the case officer, with the exception of mobile phone mast applications where they remain delegated regardless of the number of objections received;
 - e.) Where a Member requests in writing or by email within 21 days of publication of details of the application that Committee determine the application on the grounds of a matter of fundamental principle. An issue of fundamental principle shall be taken to involve the interpretation of a matter of policy which could undermine the purpose and objectives of the Local Plan or Local Development Framework, and where a member can demonstrate that the proposal would have such a prejudicial impact or effect on the area or Borough or its residents as to warrant determination by Planning Committee”
 - f.) Those cases which involve development on land owned, or in which an interest is held, by a Council Member (or their spouse/partner) or by any member of the Council staff (or their spouse/partner) where:-

An Objection representation has been received to the planning application

Those cases where the Officer recommendation is for approval but it constitutes a departure from the Development Plan

Those cases which appear to the Director of Development and Neighbourhood Services or the Head of Planning to be extraordinary when viewed against established policy guidelines, or warrant consideration by Planning Committee;

20. Any material objections or material letters of support for an application will still result in the ward member (s) being advised by e-mail. The case officer will not take any action to determine the application under delegated arrangements for a period of 48 hours after the ward member (s) has been notified, unless an application would expire in this period and views will be sought immediately on the matter. This allows the ward member to view the correspondence online and decide whether to take any action relating to how the application is determined.
21. As with the current system, members receive weekly notification by email of the weekly list of applications received. Both this and the list of applications determined each week can be viewed 24/7 by Members on line through public access and online services, although it is acknowledged that sometimes the system may not be available for technical reasons. A new version of Public Access is being introduced which will allow users to register to be notified by Email if an application within an identified area or type is submitted or additional information submitted.
22. Notwithstanding the current agreed list of signatories, in the absence of an officer required to sign under the revised scheme, the decision can be delegated up to the next appropriate officer for signing i.e. the Development Services Manager, Head of Planning, Spatial Planning Manager or Director of Development and Neighbourhood Services.
23. The revised scheme of delegation will ensure transparency, probity, fairness and consistency in decision making, and lead to continued improvements in performance.

CONCLUSION

25. The overall package of measures has led to significant improvements to the speed of the service and its accessibility by members of the public. There have undoubtedly been some difficulties, but Members will recognise the continuing need to maintain improved performance, and it is recommended that the new scheme of delegation will lead to a more streamlined and efficient service.

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FINANCIAL AND LEGAL IMPLICATIONS

Financial

RISK ASSESSMENT

The suggested reforms are categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

COMMUNITY STRATEGY IMPLICATIONS

Economic Regeneration Objective 6 'Ensure good and sustainable design in regeneration schemes and new developments-Meet government targets in determining planning applications"

COMMUNITY SAFETY

The proposal has no direct impact upon community safety.

WARD AND WARD COUNCILLORS: ALL

Appendix 1

Applications to be determined by Planning Committee (2008)

- a) Those cases which appear to the Director of Development and Neighbourhood Services or the Head of Planning to be extraordinary when viewed against established policy guidelines, or warrant consideration by Planning Committee;
- b) development proposed by the Council itself except those of a minor nature as detailed in Appendix 3- definitions associated with the operation of the scheme of delegation;
- c) Those cases where the Officer recommendation is for approval but it constitutes a departure from the Development Plan;
- d) Those cases where there are more than 5 letters/emails by way of response which are contrary to the recommendation of the case officer, with the exception of mobile phone mast applications where they remain delegated regardless of the number of objections received;
- e) where a Member requests in writing or by email within 21 days of publication of details of the application that Committee determine the application on the grounds of an issue of fundamental principle which shall be taken to involve the interpretation of a matter of policy which could undermine the purpose and objectives of the Local Plan or Local Development Framework, and where a member can demonstrate that the proposal would have such a prejudicial impact or effect on the area or Borough or its residents as to warrant determination by Planning Committee.
- f) Those cases which involve development on land owned, or in which an interest is held, by a Council Member (or their spouse/partner) or by any member of the Council staff (or their spouse/partner) as far as is reasonably practicable.

Determination of applications under delegated powers

Signatures

Each application requires the signature of the case officer, and the Area Team Leader/Major Projects Officer from one of the other teams. During the course of an application, a case officer will liaise with their own line manager to discuss the case and recommendation. Therefore to ensure consistency in decision making and for an independent view, another team leader must act as signatory on the delegated decision, i.e. they cannot sign off their own team members' decisions.

Monthly check by DSM

To introduce a quality control check into this process, each month the Development Services Manager will examine 5% of the delegated applications determined the previous month and report the findings to the Head of Planning.

Refusals

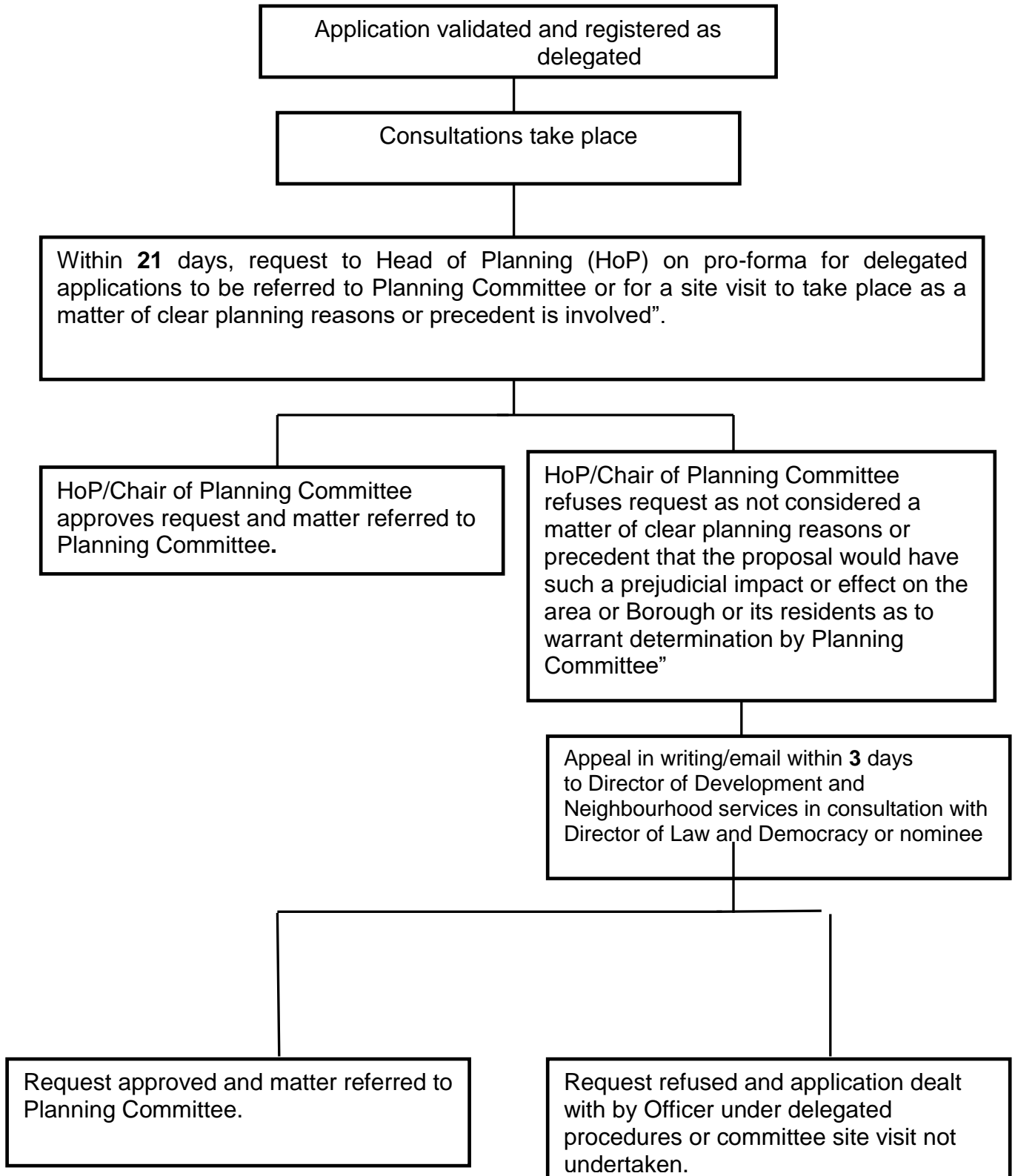
12. Applications recommended for refusal, in addition to the 2 signatures above, will require to have a third signature, that of the Development Services Manager to ensure consistent decision making across the teams and as a way of monitoring performance with regards to appeals.

13. Any material objections or material letters of support for an application result in the ward member (s) being advised by e-mail. The case officer will not take any action to determine the application under delegated arrangements for a period of 48 hours after the ward member (s) has been notified, unless an application would expire in this period and views will be sought immediately on the matter. This allows the ward member to view the correspondence online and decide whether to take any action relating to how the application is determined.

Alternative Signatories

14. Notwithstanding the above list of signatories, in the absence of an officer required to sign under the revised scheme, the decision can be delegated up to the next appropriate officer for signing i.e. the Development Services Manager, Head of Planning, Spatial Planning Manager or Director of Development and Neighbourhood Services.

CALL-IN PROCEDURE FOR DELEGATED APPLICATIONS FOR PLANNING COMMITTEE SITE VISITS.



- DEFINITIONS FOR SCHEME OF DELEGATION

1. Wherever necessary, all interpretations as to definitions will be made in the first instance by the Head of Planning. Where agreement is unable to be reached, further guidance will be available from the Director of Development and Neighbourhood Services and legal advisor.
2. An 'individual letter of response' shall be taken to constitute a letter within which it is stated that an individual or group of people, whether privately or in any other capacity object or support a proposal for reasons set out in a letter.
3. For the purposes of the operation of this scheme of delegation, petitions or pro-forma letters wherein the content remains virtually the same shall be treated as a single letter of objection/support regardless of the number of letters received or the size of the petition.
4. An issue of "fundamental principle" shall be taken to involve the testing of any part of the Local Plan or any Local Development Framework where the testing is key to the delivery of the core objectives of the Local Plan or LDF.
5. For Council developments, "minor" development is classed as extensions of up to and including 100m² of floor space, disabled access facilities, fencing, storage buildings and renewal of consents.

Site visit Protocol

- The lead officer will highlight the issues relevant to the site inspection and other planning considerations.
- On site the Officer will point out relevant features, which can be observed. Members may also wish to point out features, which can be observed, or to ask factual questions of the Officer.
- Members should be mindful of how any communication on site could be interpreted by others and seek to avoid talking to individuals whilst conducting site visits, unless being addressed as a group in accordance with arrangements agreed beforehand. Any comments should be made to the whole Committee through the Chair.
- The public, applicant and objectors will be invited to attend the meeting but will not normally be allowed to address committee unless invited to do so by the Chair, in order to clarify a factual point or point out a feature on the site. If members of the public, applicants or objectors are present, the Chair will explain this to them prior to commencing the inspection of the site.
- To avoid Members being lobbied or spoken to individually, it is advised that the Committee should attempt to keep together as a group.
- At the Planning Committee meeting, the Chair will give the Officer, after presenting the report on the proposal, the opportunity to comment on any planning matters raised by the site visit, and to clarify any other planning matters, before the normal Committee debate and decision takes place.
- No discussion or decision-making will take place on site, to ensure that decisions are clearly reached and understood – and are seen to be so.
- No hospitality will be accepted on site visits

Appendix 2- REVISED DEFINITIONS FOR SCHEME OF DELEGATION

1. Wherever necessary, all interpretations as to definitions will be made in the first instance by the Head of Planning. Where agreement is unable to be reached, further guidance will be available from the Director of Development and Neighbourhood Services and legal advisor.

2. An 'individual letter of response' shall be taken to constitute a letter within which it is stated that an individual or group of people, whether privately or in any other capacity object or support a proposal for reasons set out in a letter. Notification of the decision shall be only to the Head Petitioner or the first name/signatory

3. For the purposes of the operation of this scheme of delegation, petitions or pro-forma letters wherein the content remains virtually the same shall be treated as a single letter of objection/support regardless of the number of letters received or the size of the petition.

4. Those cases which involve development on land owned, or in which an interest is held, by a Council Member (or their spouse/partner) or by any member of the Council staff (or their spouse/partner) as far as is reasonably practicable be referred to Planning Committee where:

An Objection representation has been received to the planning application

Those cases where the Officer recommendation is for approval but it constitutes a departure from the Development Plan

Those cases which appear to the Director of Development and Neighbourhood Services or the Head of Planning to be extraordinary when viewed against established policy guidelines, or warrant consideration by Planning Committee;

Where the applicant is a Member of Staff of Planning Services or their spouse or partner

5 For Council developments, "minor" development is classed as buildings up to and including 500m², of floorspace, Advertisements, CCTV systems, and any structures required to be erected to enable the Council to fulfil its responsibility and function of Community Safety