

DELEGATED

AGENDA No.

REPORT TO EXECUTIVE SCRUTINY COMMITTEE

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 planning system is somewhat in a state of flux at the present moment in time and things will change again under the proposals being developed by the coalition government.
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. 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.
4. A second review of the scheme of delegation was carried out earlier this year when following referral to the Planning Committee, the recommendations were considered by Executive Scrutiny and Full Council and the agreed scheme is attached as Appendix 1. That scheme shall be incorporated into the revision of the scheme of delegation contained in part 3 of the Constitution except that any amendments proposed in this report that are approved by Executive Scrutiny Committee and Full Council shall also be incorporated.
5. This report therefore examines two new issues and proposes alterations to the scheme of delegation 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

6. To outline proposals for two further revisions to the scheme of delegation which will be considered at a future meeting of the Executive Scrutiny Committee and to review the Protocol on decisions contrary to officer recommendation

DELEGATION

7. Planning Committee, at its meeting held on 21st April 2010, considered a number of reforms that could be introduced to improve the quality of the service delivered and Executive Scrutiny reviewed the revised scheme. These consisted of

- a) **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 one**
- b) **Council Developments**
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
- c) **Council Member spouse or Partner, Member of Council Staff Spouse or Partner**
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

- d) ***Amendments were made to the definition of "individual letters of response"***

Full Council accepted the changes in July 2010.

8. 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.

Issues for consideration

The following issues have arisen in operating the scheme of delegation:

9. The revised scheme of delegation still provides for any Member to refer a delegated application to Committee including a request for a site visit 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. However, it is considered that the criteria should be amended to remove the term “an issue of precedent” due to the imprecise nature of the definition and the propensity for contention as to whether a proposal is being considered for the first time. It is essential that the criteria are precise and not open to misinterpretation.
10. Precedent is said to be one where the determination of an application might reasonably lead to the expectation that the Council would reach a similar conclusion in other circumstances, where the principle being established is occurring for the very first time in the locality, and having regard to the need to judge each application on its own individual merits.
11. Each application should be considered on its merits and the current criterion does not provide a precise definition and certainty as to what was envisaged and is appropriately addressed by the criteria of an issue of fundamental principle.
12. The second issue arises from the reference in sub paragraph 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.)** The wording contains a proviso “as far as reasonably practicable”. It is considered that this provision does not adequately address the difficulties of identifying whether an applicant is a member of the Council staff or their spouse or partner. It is therefore recommended that the wording be changed to “where it is known”
13. The Planning Committee at its meeting on 17th November 2010 considered the proposed changes and supports them. 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 the 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 it is known, where:-

i) An Objection representation has been received to the planning application

ii) The applicant is a member of Planning Services or their spouse or partner.

iii) The Officer recommendation is for approval but it constitutes a departure from the Development Plan

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

14. The revised scheme of delegation will ensure transparency, probity, fairness and consistency in decision making, and lead to continued improvements in performance.

CONCLUSION

15. 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.

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

Corporate Director, Development and Neighbourhood Services

Contact Officer: Carol Straughan

Tel: 01642 527027

carol.straughan@stockton.gov.uk

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

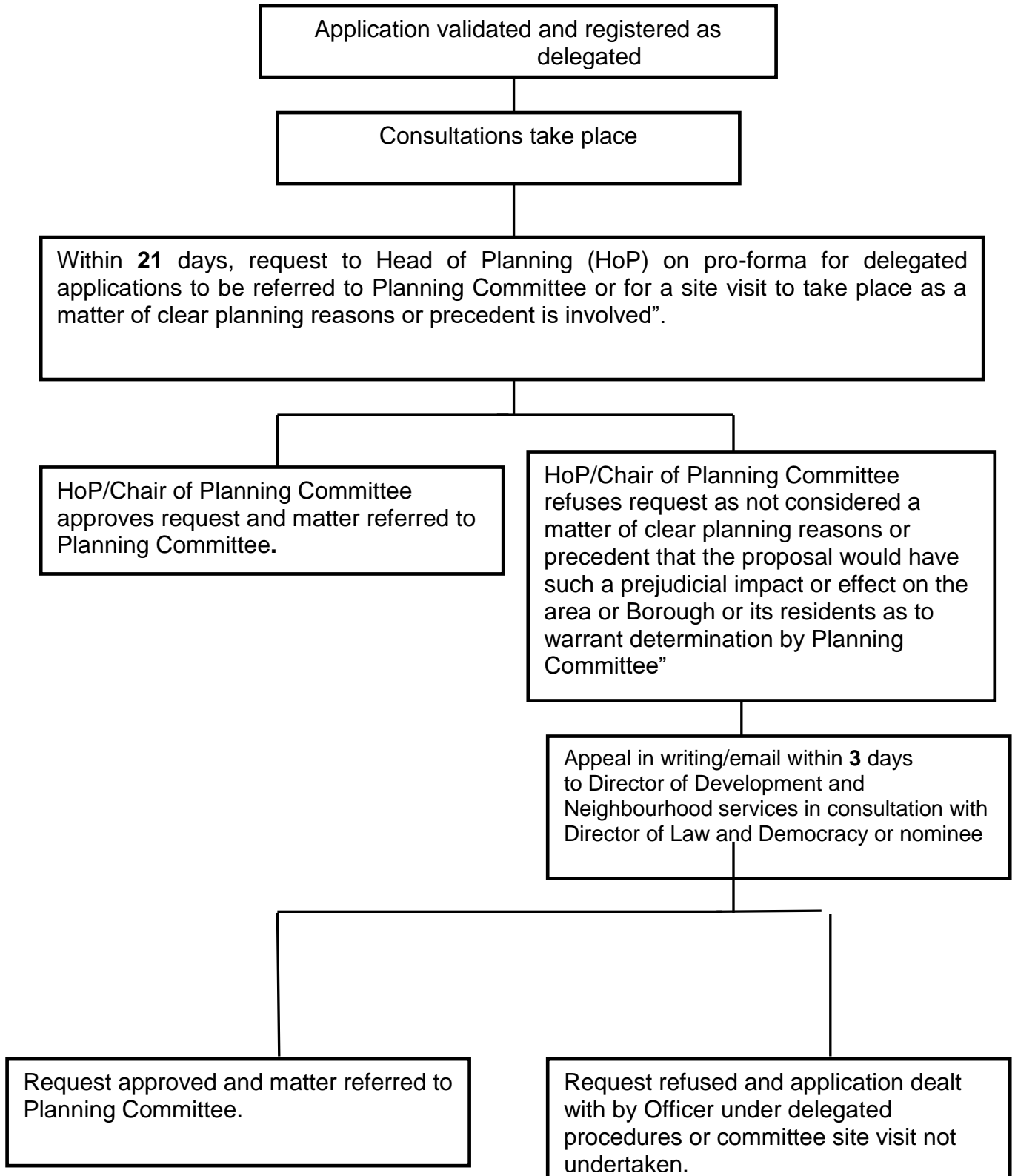
6. Applications recommended for refusal, in addition to the 2 signatures above, will require to have a third signature, that of the Development Services Manager to ensure consistent decision making across the teams and as a way of monitoring performance with regards to appeals.

7. 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

8. 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