

DELEGATED

AGENDA No.

**REPORT TO PLANNING
COMMITTEE**

17th NOVEMBER 2010

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

ALTERATION TO THE SCHEME OF DELEGATION AND IMPROVING DECISION MAKING

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.
6. The performance of the Planning Committee has been under review for some time and in an attempt to improve decision making, particularly relating to the procedures associated with those decisions made contrary to officer recommendations, a new procedure had

been identified which was designed to give an opportunity for further consideration, by officers and Members, and to reduce the risk both in terms of reputation and potential costs. Following reports to Cabinet and Full Council on 15th October 2008 and 26th October 2008, a protocol was agreed by Full Council that could be invoked in instances where Members were wanting to determine an application contrary to officer recommendation to defer the decision notice for three weeks whilst officers examine the reasons for refusal or acceptance against Planning Officers' advice were examined.

7. However the protocol was accepted subject to a review 12 months after implementing the changes. The review to be undertaken by the Head of Planning and the Planning Committee in consultation with the Cabinet Member for Regeneration and Transport. The findings and any subsequent recommendations are to be reported to Cabinet and acted upon within a timeframe agreed by Cabinet and Planning Committee

RECOMMENDATIONS

1. ***That the views of Planning Committee be sought and incorporated into the consideration of the report to be considered by Executive Scrutiny Committee in relation to the scheme of delegation.***
2. ***That the views of the Planning Committee relating to the Protocol be sought and incorporated into the consideration of the report to be considered by Cabinet***
3. ***That the continuation of the Protocol be approved***

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. 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.

PROTOCOL ON DECISIONS CONTRARY TO OFFICER RECOMMENDATION

15. Clearly, It is perfectly acceptable for Members to appropriately challenge officer recommendations and there are often subjective assessments on issues of design. However, the crux of the matter remains that if Members wish to make a decision against

officer recommendation there has to be justifiable planning grounds to do so that can be evidenced.

16. The Protocol on decisions contrary to officer recommendation was introduced to give an opportunity for Members to try a new approach to decision making which allowed time for further consideration of those decisions where officers determine that there are insufficient planning grounds, or evidence, to support the Planning Committees decision.
17. As Members will recall the Protocol is involved following consideration of a planning application and a full debate by Members and officers. The committee will be asked to make a decision based on the evidence placed before them. In exceptional circumstances if the committee is still minded to approve or refuse the application contrary to officer recommendation and contrary to the advice of the Head of Legal Services that the reasons provided appear unreasonable or unsustainable on appeal, the decision must be either 'minded to approve to minded to refuse the application'.
18. Following the meeting, Planning and Legal officers in consultation with the Corporate Director of Development and Neighbourhood Services and/or the Director of Law and Democracy will further investigate issues raised and whether the conditions/reasons are reasonable and sustainable. If it considered that they are, the decision notice will be issued accordingly. If not, the Planning Committee members will be notified, giving them an opportunity to substantiate their reasons for the interim decision and seek further information as they deem appropriate prior to the application being considered at the next Planning Committee meeting who will make a final determination.
19. Since the Protocol was agreed there have been three occasions when it has been invoked:-

Planning Committee 10th June 2009

09/0878/ADV

Trinity Green, Holy Trinity Church

Application for consent to display banners 2m long x .8m wide on 18 no. lamp posts within the grounds of Holy Trinity Church

Planning Committee Decisions 1st July 2009 approved as report

Planning Committee 23rd September 2009

09/1752/FUL

High Tree Paddock High Lane Maltby

Permanent retention of static caravan (Gypsy)

Planning Committee 4th November 2009 approved as report

Planning Committee 15th September 2010

10/1778/FUL

Land North Of Blair Avenue, Ingleby Barwick

Part retrospective application for mixed use development comprising 81 no. bedroom residential care home, 2 no. sheltered accommodation units containing 24 no. apartments and associated access, parking and landscaping.

Planning Committee 6th October 2010 refused on grounds of overdevelopment, deficient in amenity space and does not result in good design.

20. It is considered that the protocol has not removed or diluted the democratic rights of committee members to determine a decision as they think fit but allows further time for consideration, reflection and investigation.
21. The Cabinet Member for Regeneration and Transportation Councillor Cook supports the continuation of the Protocol
22. It is recommended that the continuation of the Protocol be approved and referred to Cabinet.

CONCLUSION

- . 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 revision to the new scheme of delegation and the continuation of the Protocol will lead to a more streamlined and efficient service.

Corporate Director, Development and Neighbourhood Services

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FINANCIAL AND LEGAL IMPLICATIONS

Financial

There is a cost to the authority in terms of loss of reputation, but there is a financial cost to hiring consultants to defend the decisions of the Local Planning Authority and the resultant costs that could be awarded against the Council for unreasonable conduct and the unnecessary burden placed upon the appellants because of this. These costs could potentially be significant, and would need addressing through the medium term financial plan.

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

Planning policy is part of the framework which enables the Community Strategy to be implemented and development services the physical manner in which it is delivered. Economic Regeneration Objective 6 ‘Ensure good and sustainable design in regeneration schemes and new developments-Meet government targets in determining planning applications’ is relevant to this report.

COMMUNITY SAFETY

The proposal has no direct impact upon community safety.

EQUALITIES IMPACT ASSESSMENT

This report is not subject to an Equality Impact Assessment because it is a procedure which is universally applied regarding processes within Planning Services.

WARD AND WARD COUNCILLORS: ALL

Appendix 1 – Previously Approved Scheme of Delegation (April 2010)

Determination of applications under delegated powers

Delegated authority 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 2- 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 or precedent. 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) as far as is reasonably practicable be referred to Planning Committee where:

An Objection representation has been received to the planning application

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

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;

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.

Refusals

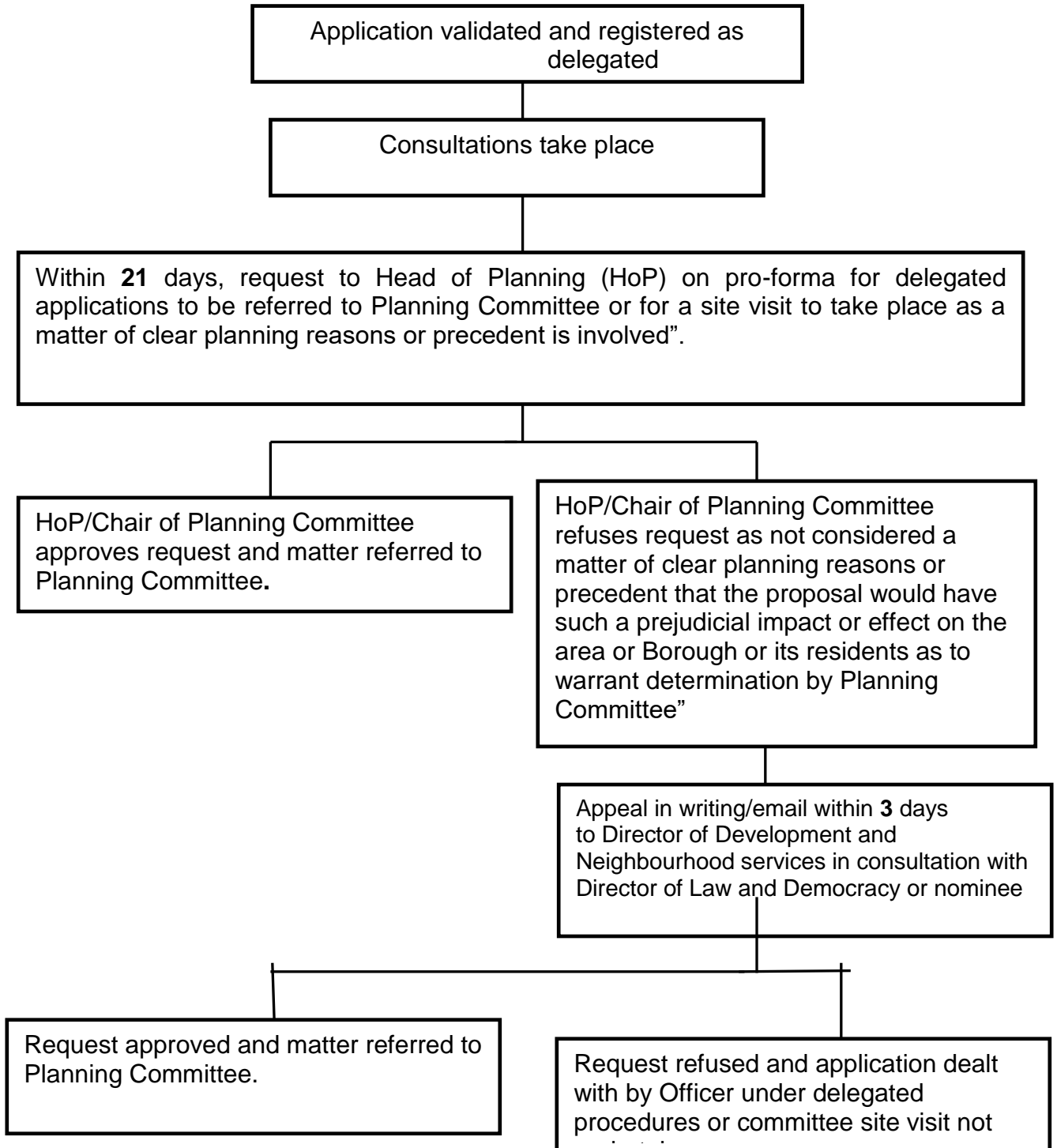
Applications recommended for refusal, in addition to the 2 signatures above, will require to have a third signature, that of the Development Services Manager to ensure consistent decision making across the teams and as a way of monitoring performance with regards to appeals.

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

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 AND SITE VISITS.



- 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

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 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
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 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