

## **REVIEW OF PLANNING DELEGATION SCHEME**

**PORTFOLIO HOLDER:** Councillor Cath Giel.  
**LEAD OFFICER:** Pat Graham, Head of Development Operations.  
**REPORT AUTHOR:** Tony Pomfret, Development Control Manager.

**Recommendation:** That the revised Planning Delegation Scheme (Appendix 'B') be approved without further amendment and the Council's constitution be amended accordingly.

### **1. INTRODUCTION**

- 1.1** A report reviewing the Planning Delegation Scheme was presented at the last meeting of Full Council. For ease of reference a copy is attached.
- 1.2** Proposed amendments were tabled at the meeting by Councillor C.J. Whiteside and consideration of the report was subsequently deferred to allow officers time to fully consider the proposed amendments which are as follows:-
- 1.** Delete the word "substantive" from para. (g) of the proposed scheme (Appendix 'B' refers) to read:  
  
"There are objections from a Parish / Town Council raising **material planning considerations** contrary to officer recommendation".
  - 2.** Incorporate additional para. (j) to read:  
  
"Resubmissions e.g. applications where an identical or similar proposal on the same site has been considered by the Planning Panel within the past 5 years".

### **2. ARGUMENT**

- 2.1** The first proposed amendment is **not** favoured for the following reasons:
- a)** The reason for incorporating the word "substantive" is simply to ensure that when a Parish / Town Council objects to a planning application the planning issues raised are supported with evidence. For example, instead of saying there are "concerns regarding highway safety" a substantive response might say "there are concerns regarding highway safety as the site is close to a busy road junction with a junior school located only 50 metres distant". Similarly, it should avoid commonly used yet unsupported phrases such as "loss of amenity" or "affect on neighbours," thereby assisting the case officers and other interested parties in their assessment of development proposals and their potential impacts. There is no intention to diminish the valuable role Parish / Town Councils play in the development control process but rather to ensure that representations are articulated to the best advantage of all concerned. In this respect it is intended to work closely with Parish / Town Councils to ensure a better understanding of each others requirements as set out in the Service Plan for 2009 / 10.
  - b)** An analysis of planning decisions taken by the Planning Panel between February 2008 and February 2009 reveals a total of 21 that were contrary to Parish / Town Council recommendations. Of these, 14 would have been referred to the Planning Panel under the delegation scheme now proposed; 5 were refused, thereby affording the applicants

- 7.84 To authorise under the Council's powers (whether in its own right or as agents for another authority) relating to planning and development, or buildings
- (i) the issue and service of such notices, certificates and documents as is deemed appropriate to the circumstances; and
  - (ii) appropriate action (including legal proceedings other than in the High Court) in respect of complaints and offences.
- 7.85 To authorise the service of requisitions for information as to interests in land or property where necessary in relation to the exercise of any functions of the Council.
- 7.86 To exercise the following functions in connection with Development Control Scheme:
- 7.87 To determine applications in the following categories:-
- (a) "Household" developments e.g. extensions; LPG tanks, satellite dishes etc.
  - (b) Minor operations e.g. erection of walls and fences; construction of vehicular accesses
  - (c) Change of use
  - (d) Temporary building and uses e.g. pigeon lofts; stables; garages etc.
  - (e) Agricultural building operations
  - (f) Minor residential development viz not more than 5 dwellings or on land not exceeding 0.4 ha (1 acre) where such development is in accordance with Local Plan policies
  - (g) Minor commercial development viz buildings not exceeding 465m<sup>2</sup> (5000ft<sup>2</sup>) or on land not exceeding 0.4ha (1 acre) where such development is in accordance with Local Plan policies
  - (h) Reserved matters viz following the grant of outline planning permission
  - (i) Advertisement
  - (j) Notice of intention to carry out development in relation to agriculture and telecommunications
  - (k) Overhead power lines
  - (l) Listed building consent
  - (m) Conservation area consent
  - (n) Temporary buildings/structures and renewals of temporary planning permissions within the Sellafield site
- 7.88 To determine applications submitted under section 65 of the Town and Country Planning Act 1990 (whether planning permission is necessary).
- 7.89 To submit comments to the Lake District National Park Authority on applications which would otherwise be outside the 28 days consultation period, and on those applications which the Authority has delegated to its officers for determination.
- 7.90 To determine applications to fell, lop, top carry out other minor works to trees subject to Tree Preservation Order or within a Conservation Area.

7.91 To approve or disapprove any of the following matters when reserved, or made the subject of conditions in planning consent:-

- (a) materials to be used externally on buildings
- (b) landscaping and tree planting proposals and tree replacements
- (c) minor alterations in the siting of development
- (d) minor modifications to plans or previously approved material
- (e) provision of vehicular access
- (f) construction of finish of boundary walls and fences
- (g) construction to finish of parking areas

7.92 To make orders for stopping – up and diversion of footpaths and bridleways in accordance with the granting of planning permission under the provisions of section 257 of the Town and Country Planning Act 1990

Applications to be referred to the Planning Panel for determination in the following circumstances:-

- (i) where a Member asks for the application to be referred to the Panel for decision. Such a request should be made to the Head of Regeneration, in writing, within 21 days of the publication of the weekly list of applications received. Any such request may also be withdrawn, in writing, by the Member at any time prior to the publication of the agenda in which the proposal is included.
- (ii) where there is an unresolved objection from any source received within a period of 21 days from the date of notification of the application (other than (a) where written objections have been received solely on grounds which are not material to determination of planning applications; or (b) where written objections have been received based on material planning considerations but where such considerations are not deemed to warrant refusal of the application having due regard to relevant policies of the extant development plan and all other material planning considerations.)
- (iii) ALL applications relating to proposed developments which are departures from national planning policy guidelines and/or Council's adopted Local Plan Policies will be referred to the panel for determination.
- (iv) ALL applications recommended for refusal will be placed before the Panel for decision.
- (v) where the Officers are of the view that the application or matter should be referred to the panel for determination.

7.93 To act as Client Officer for contracts let for building maintenance.



## COPELAND BOROUGH COUNCIL

### SCHEME OF DELEGATION FOR THE DETERMINATION OF PLANNING AND OTHER APPLICATIONS.

The power to make decisions is delegated to the Development Control Manager or, in his / her absence, the Head of Development Operations.

He / she has the power to determine all planning applications and applications for Listed Building Consent; Conservation Area Consent; Advertisement Consent; Certificates of Lawfulness or whether Prior Approval is required in relation to all notifications under the GPDO 1995 (as amended) for telecommunication, agricultural and forestry developments and demolitions and also to comment on proposals to be decided by Cumbria County Council or the Lake District National Park Authority WITH THE FOLLOWING EXCEPTIONS:-

- (a) Any application which a Member of the Council has requested be referred to the Planning Panel for determination. Such a request shall be submitted in writing / by email to the Development Control Manager within 21 days from circulation of the weekly list of planning applications on which such application appears and shall set out the reasons for requesting referral of the application to the Planning Panel.
- (b) Applications for the erection of 10 or more dwellings or, if the number is not known, where the site area is 0.5 hectares or more.
- (c) Applications for buildings where the floorspace to be created is 1000 square metres or more, or on a site of 1.0 hectare or more.
- (d) Applications recommended for approval / refusal which are contrary to the provisions of the Statutory Development Plan or other adopted or approved Council planning policies or supplementary planning guidance.
- (e) Applications submitted by or on behalf of the Council; applications in which the Council has a property or other financial interest; applications by or on behalf of any member of the Development Directorate staff or other Senior Council Officers, either as applicant or agent and applications by or on behalf of any elected Member, either as applicant or agent.
- (f) There are substantive objections from one or more statutory consultees such as Cumbria Highways, English Heritage or the Environment Agency raising material planning considerations contrary to officer recommendation.
- (g) There are substantive objections from a Parish / Town Council raising material planning considerations contrary to officer recommendation.

- (h) Applications which the Development Control Manager considers to be of sufficient importance in planning terms to refer to the Planning Panel for determination even though the application may meet the criteria for officer delegation in other respects.
- (i) Applications which involve the proposed entering into, variation or discharge of a Section 106 agreement or other form of planning obligation.

Delegated authority is also granted to the Development Control Manager to:-

1. Determine minor variations to permissions.
2. Determine submissions for discharge of planning conditions.
3. Determine applications under Section 64 of the Town and Country Planning Act 1990 (whether planning permission is required), including the Council's own "Householder Development Enquiry Forms".
4. Authorise the service of Planning Contravention Notices, Breach of Condition Notices and Planning Enforcement Notices in consultation with the Council's Head of Legal and Democratic Services (or nominee).
5. Determine applications to fell, lop, top or carry out other works to trees the subject of Tree Preservation Orders and / or located within Conservation Areas.
6. Determine the publicity arrangements required under the Town and Country Planning legislation.

#### **Provisos and Clarification**

- The Development Control Manager shall only exercise his / her delegated powers after taking into account all material planning considerations, including any written planning representations which may have been received.
- The Development Control Manager shall only exercise his / her delegated powers in accordance with planning legislation, regulations and procedures and following the expiry of relevant consultation periods.
- The Development Control Manager shall report details of all applications determined under his / her delegated powers to the Planning Panel on a monthly basis.

February 2009.

## REVIEW OF PLANNING DELEGATION SCHEME.

**PORTFOLIO HOLDERS:** Councillor Cath Giel  
**LEAD OFFICER:** Pat Graham, Head of Development Operations.  
**REPORT AUTHOR:** Tony Pomfret, Development Control Manager.

### Summary and Recommendation:

**Summary:** The current planning delegation scheme is demonstrably no longer fit for purpose and needs to be reviewed and redrafted if the national target of 90% officer delegation is to be achieved in the context of overall service delivery improvement. This report critically appraises a range of options leading to recommendations for a revised scheme.

**Recommendation:** That the revised Planning Delegation Scheme (Appendix 'B') be approved and the Council's constitution be amended accordingly.

## 1. INTRODUCTION

1.1 The current scheme for designated officers making delegated decisions on planning and similar applications was drawn up some 10 years ago and, constitutionally, appears as Appendix 'A' to the Council's Planning Code of Conduct which itself was revised and approved by Council in July 2006.

1.2 A copy of the present delegation scheme is attached (Appendix 'A') which is prescriptive in format whereas official and professional good practice advice all advocate a "by exception" delegation scheme. In other words, all planning and related decisions should be delegated to nominated officers other than specified exceptions.

1.3 Such an approach should enable a minimum of 90% of decisions to be taken under delegated powers, this being a national target advocated by the Local Government Association and the Office of the Deputy Prime Minister in the March 2004 joint publication "Delivering Delegation". The percentage of delegated planning decisions within Copeland over the last 3 years has been as follows:-

2005 / 06	70%
2006 / 07	75.5%
2007 / 08	72%

For the period April – December 2008 the figure is 73.5%. Demonstrably, therefore, Copeland is well adrift of the national target figure of 90%.

## **2. ARGUMENT**

- 2.1 Delegation of most planning and related applications to officers has been consistently recommended in official and professional good practice advice as a means of making the development control system more efficient. It also allows the Planning Panel to focus attention on the more significant and / or controversial applications.
- 2.2 Delegated decisions are usually taken more quickly in terms of not having to await a Planning Panel meeting; involve less paperwork and help to smooth out officer workloads by avoiding peaks at agenda preparation time. By freeing some officer time and in the absence of a dedicated Planning Enforcement Officer, case officers will better be able to maintain an acceptable level of enforcement work. So the local engagement will not be so much about determining straightforward applications which we can do little about in the light of local and national policies but, instead, we can do more to ensure suitable standards are maintained through more proactive enforcement work. Cost savings should therefore accrue but not at the expense of full consultation with the public and statutory consultees such as Cumbria Highways; the Environment Agency, English Heritage, Natural England, etc.
- 2.3 Some resistance has previously been raised to higher rates of delegation due to concerns that councillors are being excluded from planning decision-making. In response to such concerns it should be pointed out that the Council already has in place robust overview and scrutiny procedures to reassure councillors that a higher rate of delegation does not lead to a reduction in the quality of planning decisions. In fact, the Council's Economic Development and Enterprise Overview and Scrutiny Committee's Task and Finish Group, in looking at how appeals against planning decisions are dealt with by the Council, recommended in their 21<sup>st</sup> August 2008 report that the amount of planning decisions that are by delegated authority should be increased.
- 2.4 Following the Council's designation as a Standards Authority in 2006 / 07 for poor performance in the speed of determination of major planning applications, consultants (Addison & Associates) under the auspices of the Planning Advisory Service carried out a review of the development control service. Their report, published in January 2008, criticized the Council's delegation scheme as being poorly drafted, unclear and too permissive and recommended review by a body other than the Panel itself.
- 2.5 Other influential documents advocating "by exception" schemes delegating at least 90% of decisions to officers include the "Cumbria Development Control Good Practice Guide" produced in April 2008 by Consultants (Trevor Roberts Associates) on behalf of all Cumbrian planning authorities. Also, the November 2008 Killian Pretty national review of development control on behalf of the Government looked objectively at the planning application process to identify how it could be further improved and, in particular, to consider ways to reduce unnecessary bureaucracy and so make the process swifter and more effective for the benefit of all users.

### **3. OPTIONS TO BE CONSIDERED**

3.1 There is no nationally advocated model for a “by exceptions” planning delegation scheme but rather is a matter for each individual authority. The following paragraphs critically appraise some typical exceptions based on schemes already operational elsewhere.

#### **3.2 Exceptions on the basis of scale of applications.**

Many authorities specify that “major” applications should be determined by Committee, not by officers, the definition of “major” being that adopted by the Government for monitoring purposes viz.

- Housing developments of 10 or more units or on a site of over 0.5 hectares.
- Buildings of 1000 square metres or more or on a site of 1 hectare or more.

This is considered a reasonable exception to include in the revised delegation scheme, ensuring that all such large scale applications will be determined by the Planning Panel.

#### **3.3 Exceptions on the basis that the decision would be a departure from policy.**

The key issue here is to clearly define what is “policy”. To avoid imprecision it is suggested that “policy” for these purposes be defined as the Statutory Development Plan – currently the adopted Copeland Local Plan (June 2006) and the North West of England Plan – Regional Spatial Strategy to 2021 (September 2008).

#### **3.4 Exceptions for refusals.**

At present, recommendations to refuse are referred to the Planning Panel whereas equivalent approval decisions are delegated. This is now considered to be misguided. If an application is approved, it is likely to be implemented; if it is refused then there is a right of appeal. Decisions to refuse applications demonstrably at variance with the Statutory Development Plan should, therefore, be delegated to officers.

#### **3.5 “Probity” Exceptions.**

It is common for schemes to specify that the Committee should determine applications by the authority itself; applications in which the authority has a property or financial interest; applications by its planning and / or specified senior staff and applications by councillors. There are good arguments in favour of such exceptions on the basis that such decisions should be taken very transparently in the public arena.



3.6 **Exceptions when there are contrary representations from statutory consultees.**

Sometimes a decision favoured by an officer may be contrary to that recommended by a statutory consultee. Consultee responses, however, are meant to inform the decision, not make it. The officer has, by law, to take consultee responses into account and any departure from consultee advice in forming a conclusion / recommendation must be clearly justified. On balance, therefore, automatic referral of an application to the Planning Panel on the sole grounds of a contrary recommendation from a statutory consultee is not favoured.

3.7 **Exceptions where neighbour notification / publicity generates objections and / or an objector has requested to address the Planning Panel.**

Arguably the most serious failing of the current delegation scheme is that it automatically triggers referral of an application to the Planning Panel for determination should a member of the public so request, thereby handing over the decision as to how an application is handled in a very unpredictable and inconsistent manner. This is clearly unacceptable and the revised delegation scheme must address this. The right to address the Panel should only apply where applications are being determined by the Panel; the rules which determine whether or not such an application should be so determined need to be quite separate. Therefore, if an application goes before the Panel under the terms of the delegation scheme then the right of public address arises; but if not, then there should be no opportunity for public address. To have it otherwise lays a scheme open to severe manipulation.

3.8 **Exceptions where Parish / Town Council's make contrary recommendations.**

The arguments here are very similar to those elaborated above at 3.6 insofar as the decision as to how an application is handled is taken out of the hands of the Local Planning Authority and given to the Parish / Town Council where there is one. While the views of Parish / Town Councils are always welcomed and represent an important part of the planning consultation process, a contrary representation from them should not imply an automatic referral to the Planning Panel.

3.9 **Exceptions where a councillor has requested an application be considered by the Panel.**

This "member call-in" arrangement already forms part of the present delegation scheme whereby a councillor can submit a written request within 21 days of the publication of the weekly list of applications received requesting that a particular application be referred to the Panel for determination. Although infrequently used, this arrangement is considered fundamental to any delegation scheme and should be retained.

3.10 **Exceptions referred to the Panel for determination at the discretion of the officer.**

The right of the Planning Officer to refer an application to the Panel for determination at his / her discretion is considered important, even though the application may meet the criteria for officer delegation in other respects. Referrals under this heading should be justified by planning reasons set out in the agenda papers and not, for example, solely on the grounds that the application is deemed to be “controversial”.

3.11 **Exceptions relating to specific types of application.**

Some delegation schemes specify types of application which have to be determined by the Committee. These are usually applications regarded locally as sensitive such as telecommunication or wind energy proposals. Provided the revised delegation scheme incorporates a provision for referral at officer discretion, this particular exception based on application types is not deemed necessary.

**4. CONCLUSION**

- 4.1 Demonstrably the current planning delegation scheme is no longer fit for purpose and needs to be reviewed and redrafted if the national target of 90% officer delegation of all planning decision is to be attained in the context of overall service improvement.
- 4.2 Increased officer delegation will allow the Planning Panel to focus attention on significant and / or controversial matters arising from the development control process.
- 4.3 It must be stressed, however, that decisions delegated to officers go through the same rigorous, statutory process involving consultation with statutory bodies and neighbour notification procedures as those applications referred to the Panel for determination. A photographic record of the application site together with a detailed officer report is attached to every file with clear reasons for the decision which must be signed off by the Development Control Manager.
- 4.4 To allay any concerns by councillors it should be noted that the Council already has robust procedures available via the Overview and Scrutiny Committees to monitor the quality and consistency of delegated decisions taken by officers on behalf of the authority.
- 4.5 The designated officer for signing-off delegated planning decisions would continue to be the Development Control Manager, in the absence of whom the duty could be undertaken by the Head of Development Operations.
- 4.6 Based on the arguments and options advanced earlier in this report a recommended revised planning delegation scheme is attached, Appendix ‘B’ refers.

- 4.7 Comments arising from the Planning Panel's consideration of this report on 4<sup>th</sup> February 2009 will be reported verbally at the meeting.

## **5. FINANCIAL IMPLICATIONS.**

- 5.1 The revised Planning Delegation Scheme will not incur any additional expenditure and should, in fact, generate savings as a result of more efficient delivery of the development control service.

### **List of Appendices:**

- Appendix 'A' - Current planning delegation scheme.
- Appendix 'B' - Revised planning delegation scheme.

### **List of Consultees:**

- Councillor Miss E. Woodburn.
- Councillor Mrs C. Giel.
- Councillor Mr A. Holliday.
- Councillor M. McVeigh.
- Councillor W. Southward.
- Corporate Team.
- Mr T. Capper.
- Mr N. White.

a right of appeal; 1 overcame the Parish Council's concerns by the submission of an amended plan and 1 raised no material planning issues but rather reflected a neighbour dispute. This clearly demonstrates that the vast majority of applications of concern to Parish / Town Councils would continue to be referred to the Planning Panel for determination, the main exception being refusals as a result of which no development takes place but the applicant is afforded a right of appeal.

- c) The scheme as currently proposed received the unanimous support of the Planning Panel.
- d) Other criteria within the recommended scheme would continue to apply, particularly that relating to the Development Control Manager's discretion.

The second proposed amendment is **not** favoured for the following reasons:

- a) It is too expansive and would involve relatively minor householder developments previously considered by the Planning Panel which the revised delegation scheme seeks to exclude for reasons set out in the main report.
- b) Existing criteria in the recommended scheme would trigger the referral to the Planning Panel for determination of the more significant applications previously considered by the Panel.
- c) The scheme as currently proposed received the unanimous support of the Planning Panel.

### **3. CONCLUSION**

- 3.1 Careful consideration has been given to the suggested amendments but neither is deemed to add value to the revised delegation scheme as now proposed for reasons set out above.

**List of Appendices:** See attached.

**List of Background Documents:** See attached.

**List of Consultees:** See attached.