

WEST OXFORDSHIRE DISTRICT COUNCIL

DEVELOPMENT CONTROL COMMITTEE:

THURSDAY 18 SEPTEMBER 2014

PLANNING AND STRATEGIC HOUSING SCHEME OF DELEGATION

REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING

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1. PURPOSE

To review the existing scheme of delegation as it applies to the Development Management, Enforcement, Conservation and Landscape elements of the Service in light of legislative changes and the experience since it was last reviewed in April 2008.

2. RECOMMENDATIONS

- (a) That the scheme of delegation attached as an [Appendix](#) to this report be introduced for a trial period of one year;
- (b) That Members give consideration as to whether to further extend the scheme as per the option set out in paragraph 4.2 of this report; and
- (c) That the Council be requested to incorporate the revised delegations into the Officer Delegation Rules included in Part 4 of the Constitution.

3. BACKGROUND

- 3.1. Members will recall that historically the Council had very low levels of delegation on planning matters with less than half of all applications being determined by officers. This was at the bottom of the lower quartile nationally. Generally the applications determined by committee only meet the statutory time deadline targets in approximately 50% of occasions whereas those determined under delegated powers meet the target in well over 90% of occasions. In 2003 in response to concerns regarding the impact that this was having on the ability to determine applications in a timely manner the scheme of delegation was reviewed by members and the percentage of delegated applications subsequently rose to approximately 75%. This revised scheme was formally adopted in 2004 following a trial period of a year.
- 3.2. Subsequently, when the committee considered the issue of public speaking at the sub-committees in 2007, it was determined that the size of the schedules needed to be reduced further to account for the additional time that the public speaking process would take. The scheme of delegation was refined further and following a trial period of a year was confirmed in April 2008. The level of delegation rose to approximately 85% which, whilst in the lower quartile nationally and below the Government target of 90% of delegated applications, did enable a reduction in the number of applications reported to members such that public speaking could be introduced and members could in general concentrate on the most important/controversial applications.
- 3.3. Since 2008 the change in Government has heralded substantial reforms in the planning system with some new powers introduced. The on-going monitoring of performance of local planning authorities by the Government reflecting a desire that applications are dealt with efficiently and with newly introduced powers to take over the role of the LPA when targets are not met also necessitates a review of current arrangements to ensure that they meet the focus of the Government on delivery. Experience of the

operation of the system in the past five years has identified a small number of areas where further refinement could be introduced without affecting the underlying premise that members should deal with the most important and controversial schemes and retain the ability to call in lesser applications as required. This new proposed scheme as set out in the [Appendix](#) (starting on page 4) has been drafted with these principles/factors in mind.

The proposed new scheme

- 3.4. The consolidated version of the review of the scheme of delegation has been created with input from planning and legal staff. Reference has also been made to schemes of delegation operating elsewhere. Members will note that some of the delegations are repeated. This is so that whichever work area is being considered, or where the scheme of delegation may be needed to provide evidence to a court that the delegation exists, it should be easily found rather than having to refer to the scheme of delegation as a whole. The repetition has required re-numbering, coupled with the fact that the provisions have been reorganised so that they are now generally sequential (entry, investigation, initiation of action, appeal, prosecutions, direct powers, etc). They are also grouped as to similar types of function.
- 3.5. New elements have been added to reflect new powers, previous omissions, etc and these along with the main changes are **shaded grey**. Potential further changes as discussed in section 4 are indicated in ***bold italics***. The suggested scheme does not include the Community Infrastructure Levy (CIL), which falls within the Service and could be reviewed if/when members decide to implement CIL when a series of further delegations will be required.
- 3.6. The other main strategic change is that officers have sought to bring much of the delegation down to the Head of Service or Area Development Manager (where in reality it sits anyway) rather than it notionally being with a Strategic Director. All references to the Chief Executive in the existing scheme have been amended to refer to the Head of Legal and Property Services. Some items have been clarified as being with the case officer (clearing conditions) and again this is to reflect reality and to ensure that the delegation is operated at the lowest tier commensurate with probity and governance
- 3.7. By way of explanation of the highlighted sections new power PE6 enables officers to serve tidy up land notices without the need for committee authorisation and to carry out action in default if they are not complied with. PE8 enables the new temporary stop notices to be issued under delegated powers in urgent situations. PE13 is a catch all to clarify that the legal service are enabled to undertake all aspects relating to legal proceedings for breach of planning control whereas PE15 and 16 are tidying up of existing provisions. PT3 allows officers to determine rather than just approve applications for works to all protected trees and to institute proceedings for unauthorised works to trees in a conservation area. PDM3 clarifies that requiring and commenting upon Environmental Statements is delegated.
- 3.8. The various changes to PDM 4 clarify that officers are enabled to impose conditions and planning obligations (i.e. Section 106 deeds) on delegated applications and are enabled to determine the new applications for extending time limits and varying conditions. Part (e) is a redrafting of the existing provision and proviso (h) widens the extent of those applications that should come before members because of perceived or actual conflict of interest. Proviso (i) requires that the new planning obligations are “materially” different to prevent relatively minor variations in the deed having to be

approved by committee. Proviso (k) would ensure that advertisement applications stayed delegated as well as householder applications. PDM8 refers to the power to discharge conditions and deal with minor amendments and PDM18 refers to the new power to decline to determine applications whilst PCI confirms the recent decision of Cabinet to ensure all matters relating to Conservation Areas other than their designation or amendments to the boundary are delegated. This is therefore not a matter for this committee but is included so that all the relevant delegations to the Service are grouped together

4. ALTERNATIVES/OPTIONS

- 4.1. Members could decide not to amend the scheme. However for the reasons outlined earlier in this report this is not recommended as some new powers will not be covered, and some anomalies will exist and the benefits of maximising the extent of delegation whilst retaining oversight/ownership by members will be lost.
- 4.2. With regard to the areas in ***bold italics*** these provisions as drafted in the extant scheme sought to introduce safeguards by requiring that Members were notified of intended decisions not to pursue enforcement action or to issue delegated refusals, and required applications over a threshold size or where there had been a previous dismissed appeal to come to Members for determination in all circumstances irrespective of whether there was any wider interest in them. In practice there have been very few instances where the local member has not agreed with an intended delegated refusal and some of the larger floorspace applications (e.g. large barns) generate little public interest or complexity that would require Member input. If members did decide to widen the scheme to include the items in ***bold italics*** the safeguard is that the same powers could effectively be exercised on a bespoke basis under PDM4(b) where the matter was of local concern. Dealing with applications in this way would mean that the current delays and additional work associated with referring non-controversial applications of that nature to Members when there is no real interest in them would be avoided.

5. FINANCIAL IMPLICATIONS

There are none arising directly from this report although the processes involved in dealing with applications under delegated powers are simpler and more cost effective than dealing with applications at Committee.

6. RISKS

A decision not to update/clarify the scheme of delegation could result in a failure to deal with applications in a timely manner or potential problems in using new powers effectively and in a timely manner. Persistent under delivery against targets can lead to the LPA having its planning powers curtailed by central government.

7. REASONS

See section 3 above.

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Date:

Background Papers:

None

Proposed Scheme of Delegation

Enforcement - Planning Functions

	Function	Delegated by:	Delegated to:
PE1.	To authorise named officers to enter land under the following provisions:-	Development Control Committee	Head of Legal and Property Services/ Head of Planning and Strategic Housing
	(a) Section 324 of the Town and Country Planning Act 1990. (b) Sections 196a and 196b of the Town and Country Planning Act 1990. (c) Sections 214b and 214c of the Town and Country Planning Act 1990. (d) Sections 88a and 88b of the Planning (Listed Buildings and Conservation Areas) Act 1990.		
PE2.	To serve Requisitions for Information and Planning Contravention Notices under the following enactments:- (a) Section 330 of the Town and Country Planning Act 1990. (b) Section 16 of the Local Government (Miscellaneous Provisions) Act 1976. (c) Section 89 of the Planning (Listed Buildings and Conservation Areas) Act 1990. (d) Section 171c of the Town and Country Planning Act 1990.	Development Control Committee	Head of Legal and Property Services / Head of Planning and Strategic Housing
PE3.	To institute proceedings in the Magistrates' Court for any non-return of the notices referred to above.	Development Control Committee	Head of Legal and Property Services
PE4.	To Serve Breach of Condition Notices	Development Control Committee	Head of Planning and Strategic Housing
PE5.	To serve Enforcement Notices following prior consultation with the local Member(s).	Development Control Committee	Head of Planning and Strategic Housing
PE6.	To serve Notices under section 215 of the Town and Country Planning Act for remedying the condition of land and to undertake consequent legal or direct action in default to secure compliance with the notice and recover expenses reasonably incurred	Development Control Committee	Head of Planning and Strategic Housing
PE7.	Under Section 187(B) of the Town and Country Planning Act 1990 and Section 222 of the Local Government Act 1972 to seek an injunction to secure compliance with planning legislation or restrain breaches or anticipated breaches of planning control including breaches of agreements under Section 106 of the Town and Country Planning Act 1990	Development Control Committee	Head of Legal and Property Services
PE8	In cases of urgency the following matters: Article IV Directions Listed Building Enforcement Notices Stop Notices Tree Preservation Orders Building Preservation Orders Temporary Stop notices Section 215 action	Development Control Committee	Head of Planning and Strategic Housing

	Function	Delegated by:	Delegated to:
PE9.	Powers of action under Section 225 of the Town and Country Planning Act 1990 relating to fly posting and/or as amended or extended by the Clean Neighbourhoods and Environment Act 2005	Development Control Committee	Head of Planning and Strategic Housing
PE10.	To serve discontinuance notices relating to breaches of advertisement Regulations.	Development Control Committee	Head of Legal and Property Services
PE11.	To take enforcement action and institute legal proceedings in respect of breaches of the Hedgerows Regulations	Development Control Committee	Head of Legal and Property Services
PE12.	Applications under the Transport Act to the Licensing Authority for Goods Vehicle Operator's Licence: authority to make observations on the application to the Licensing Authority.	Development Control Committee	Area Development Manager
PE13	Institute, defend and withdraw criminal or civil legal proceedings for offences, breaches of Planning legislation (including for Listed Building Regulations and Tree Preservation Orders; non-compliance with enforcement notices, Stop Notices, Temporary Stop Notices, Breach of Condition Notices, Section 215 Notices, and unauthorised advertisements)	Development Control Committee	Head of Legal and Property Services
PE14.	To determine, following prior consultation with the local Member(s) , that no further action is required in respect of a breach of planning control which could have been dealt with under delegated powers through the grant of a planning permission had an application been submitted.	Development Control Committee	Head of Planning and Strategic Housing
PE15	To withdraw Enforcement Notices and Breach of Condition Notices when they have clearly been complied with and it is no longer possible for breaches to occur.	Development Control Committee	Head of Planning and Strategic Housing
PE16	The power to withdraw Article 4 Directions where it is no longer expedient to remove permitted development rights.	Development Control Committee	Head of Planning and Strategic Housing

Trees - Planning Functions

	Function	Delegated by:	Delegated to:
PT1.	In cases of urgency the making of Tree Preservation Orders	Development Control Committee	Strategic Director or in their absence HPSH
PT2.	Authority to make and subsequently confirm as appropriate unopposed Tree Preservation Orders	Development Control Committee	Head of Planning and Strategic Housing
PT3	Authority to determine : (a) any application to carry out work to a tree(s) subject to a Tree Preservation Order; (b) any notification to carry out work to a tree within a Conservation Area.	Development Control Committee	Head of Planning and Strategic Housing/ADM
PT4	To authorise named officers to enter land under the following provisions:- (a) Section 324 of the Town and Country Planning Act 1990. (b) Sections 196a and 196b of the Town and Country Planning Act 1990. (c) Sections 214b and 214c of the Town and Country Planning Act 1990. (d) Sections 88a and 88b of the Planning (Listed Buildings and Conservation Areas) Act 1990.	Development Control Committee	Head of Legal and Property Services /HPSH

	Function	Delegated by:	Delegated to:
PT5.	Authority to institute proceedings in the Magistrates' Court in respect of breaches of Tree Preservation Orders and Trees within Conservation Areas and non-compliance with Tree Replacement Notices	Development Control Committee	Head of Legal and Property Services
PT6	To determine Hedgerow Removal Notices and ancillary matters	Development Control Committee	Head of Planning and Strategic Housing/ADM
PT7	To take enforcement action and institute legal proceedings in respect of breaches of the Hedgerows Regulations 1997	Development Control Committee	Head of Legal and Property Services
PT8	To deal with any consultation (subject to there being no objections) by the Forestry Commission under: (a) Felling licence regulations. (b) The Forestry Grant Scheme. (c) Dedication Scheme. or such schemes and regulations as may replace or supplement the above.	Development Control Committee	Head of Planning and Strategic Housing/ADM
T9	To determine, following prior consultation with the local Member(s), that no further action is required in respect of a breach of control which could have been dealt with under delegated powers had an application been submitted.	Development Control Committee	Head of Planning and Strategic Housing/ADM

Development Management - Planning Functions

	Function	Delegated by:	Delegated to:
PDM. 1	To authorise named officers to enter land under the following provisions:- a) Section 324 of the Town and Country Planning Act 1990. b) Sections 196a and 196b of the Town and Country Planning Act 1990. c) Sections 214b and 214c of the Town and Country Planning Act 1990. d) Sections 88a and 88b of the Planning (Listed Buildings and Conservation Areas) Act 1990.	Development Control Committee	Head of Legal and Property Services
PDM. 2	To determine whether the prior approval of the Local Planning Authority is required for development falling within the provisions of the Town and Country Planning (General Permitted Development) Order 1995(as amended).	Development Control Committee	Area Development Manager
PDM 3	Authority to require an Environmental Statement under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999(as amended) and to offer screening and scoping opinions.	Development Control Committee	Area Development Manager
PDM 4	To determine (with or without planning conditions or obligations) all planning applications and applications for Advertisement Consent, Listed Building Consent, Conservation Area Consent(as amended), Certificates of Lawfulness, Time Limit Extensions, Variation of Condition (S73) or Prior Approval under the GPDO under delegated powers, with the following	Development Control Committee	Area Development Manager

	Function	Delegated by:	Delegated to:
	<p>exceptions:-</p> <ul style="list-style-type: none"> (a) Those applications where the intended decision is to refuse shall, in addition to the exceptions set out below at (b) to (l) also be subject to prior consultation with the local District Councillor(s) prior to the issue of the decision. (b) Applications which within 21 days of the date of registration. any District Councillor requests (in writing) be determined by committee stating the planning reasons for referral to Committee (c) Applications for the erection of 10 or more dwellings or, if this is not known, where the site area is 0.5 hectares or more (with the exception that on sites which are located on a site allocated for residential development in the Development Plan applications may continue to be delegated). (d) Applications for the provision of buildings (including extensions) where the floor space to be created is 1000sq metres or more or the development is to be carried out on a site with an area of one hectare or more. (e) Applications where the intended decision would be a material departure from the provisions of the approved or draft development plan or other approved or adopted Council planning policies or Supplementary Planning Guidance. (f) Applications submitted by or on behalf of the Council or which, in the opinion of a Strategic Director or Head of Planning and Sustainable Communities, affect Council owned land and/or buildings. (g) Applications for telecommunications masts (with the exception that additional antennae may be allowed provided that the Government's safety guidelines are met) (h) Applications submitted by or on behalf of a Member or employee of the Council (or their spouse/partner) or where there may be a similar perceived or actual conflict of interest. (i) Applications which involve the proposed variation or discharge of a section 106 deed that materially differs from the Council's standard models or departs from the reasons for the original imposition of the obligation (j) Applications which the Head of Planning and Sustainable Communities or Area Development Manager, considers should be referred to the appropriate Area Planning Sub-Committee for determination. (k) Applications where the views of the Town Council or Parish Council are clearly contrary to the proposed recommendation and cannot be resolved by condition or negotiation (with the exception of householder development or advertisement consent which may continue to be delegated) (l) Applications submitted within one year of a dismissed appeal on the site where it is intended that the application be approved 		
	<p>Notes regarding PDM4:</p> <ul style="list-style-type: none"> l) The restrictions set out in categories b-n above shall not apply to applications for a resubmission of an extant valid planning permission or to applications where the principle of 		

	Function	Delegated by:	Delegated to:
	<p>the development has already been agreed by a previous permission/consent and the new proposal contains details generally consistent with the earlier permission and planning circumstances have not changed</p> <p>2) The restrictions set out in categories b-l above shall not apply to any application seeking Reserved Matters consent where the principles have previously been agreed and the details are consistent with the criteria set out in the outline permission.</p> <p>3) The determining officer shall only exercise the delegated powers after taking into account all material planning considerations, including any written planning objections or representations which may have been received.</p> <p>4) The determining officer shall only exercise the delegated powers in accordance with planning legislation, regulations and procedures under which provision may be made for reference of applications to the Secretary of State or other statutory body.</p> <p>5) The determining officer shall only exercise the delegated powers following the expiry of the relevant consultation periods (with the proviso that where because of the submission of the application in relation to the Committee date it is not possible to deal with an application within the statutory period, then the application shall be referred to the Committee in advance of the expiry of the consultation period for Members to determine whether they wish to delegate determination of the application to Officers).</p> <p>6) The HPSC shall report details of all applications determined under delegated powers to Members of the appropriate Area Planning Sub-Committee.</p>		
PDM 5	Where recommendations on a planning application or proposal are not accepted by the Area Planning Sub-Committee, the right to withdraw the application or proposal for final determination by the Development Control Committee.	Development Control Committee	Area Development Manager
PDM 6	Authority to determine that a particular planning application or other matter shall be referred to the Development Control Committee for decision.	Development Control Committee	HPSH or Area Development Manager
PDM 7	Authority to deal with complaints about High Hedges under Part 8 of the Anti-Social Behaviour Act 2003.	Development Control Committee	HPSH or Area Development Manager
PDM 8	To determine discharge of conditions applications, Minor and Non Material Amendments	Development Control Committee	Area Development Manager/Case Officer
PDM 9	<p>In cases of urgency the following matters:</p> <p>Article IV Directions</p> <p>Listed Building Enforcement Notices</p> <p>Stop Notices</p> <p>Tree Preservation Orders</p> <p>Building Preservation Orders</p> <p>Temporary Stop notices</p> <p>Section 215 action</p>	Development Control Committee	Head of Planning and Strategic Housing
PDM 10	Under Section 187(B) of the Town and Country Planning Act 1990 and Section 222 of the Local Government Act 1972 to seek an injunction to restrain breaches of planning control including breaches of agreements under Section 106 of the Town and Country Planning Act 1990.	Development Control Committee	Head of Legal and Property Services

	Function	Delegated by:	Delegated to:
PDM 11	To determine, following prior consultation with the local Member(s), that no further action is required in respect of a breach of planning control which could have been dealt with under delegated powers through the grant of a planning permission had an application been submitted.	Development Control Committee	Head of Planning and Strategic Housing
PDM 12	Institute, defend and withdraw criminal or civil legal proceedings for offences breaches of Planning legislation (including for Listed Building Regulations and Tree Preservation Orders; non-compliance with enforcement notices, Stop Notices, Temporary Stop Notices, Breach of Condition Notices, Section 215 Notices, and unauthorised advertisements)	Development Control Committee	Head of Legal and Property Services
PDM 13	The power to withdraw Article 4 Directions where it is no longer expedient to remove permitted development rights.	Development Control Committee	Head of Planning and Strategic Housing
PDM 14	To respond to applications for the winning and working of minerals or the use of land for mineral- working deposits (a “County matter” and, therefore, not determined by this Council which has only a consultee role) following consultation with the Ward Member, and with the Chairman of the Development Control Committee and the Leader of the Council.	Development Control Committee	Area Development Manager
PDM 15	To respond to applications for waste development (a “County matter” and, therefore, not determined by this Council which has only a consultee role) following consultation with the Ward Member, and with the Chairman of the Development Control Committee and the Leader of the Council.	Development Control Committee	Area Development Manager
PDM 16	To comment on applications under the Transport Act to the Licensing Authority for Goods Vehicle Operator's Licence to the Licensing Authority.	Development Control Committee	Area Development Manager
PDM 17	Authority to submit observations on Traffic Orders to the Highway Authority.	Development Control Committee	Area Development Manager
PDM 18	To decide whether to decline to determine applications under sections 70a and 70b of the Town and Country Planning Act and sections 81a and 81b of the Planning (Listed Buildings and Conservation Areas) Act 1990	Development Control Committee	HSPH/Area Development Manager

CONSERVATION AREAS–Planning Functions

	Function	Delegated by:	Delegated to:
PC1.	With the exception of either the designation of or an amendment to the boundaries of a Conservation Area, to exercise the Council's functions in relation to Conservation Areas	Executive	Head of Planning and Strategic Housing