

**WEST OXFORDSHIRE DISTRICT COUNCIL**

**DEVELOPMENT CONTROL COMMITTEE**

**MONDAY 11 JUNE 2018**

**AMENDMENT TO SCHEME OF DELEGATION**

**REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING**

**(Contact: Phil Shaw, Tel: (01993 861687))**

(The Committee decision at (a) will be a resolution and (b) will be a recommendation to Council)

**1. PURPOSE**

To enable Members to consider amending the scheme of delegation to account for recent legislative changes and to clarify some anomalies which have arisen since it was last reviewed.

**2. RECOMMENDATIONS**

- (a) That the suggested alterations to the scheme of delegation explained in this report and set out as shaded text in the [Appendix](#), be approved; and
- (b) That as a consequence of recommendation (a) above, Council be requested to incorporate the amendments into the officer delegation rules contained in Part 4 of the Constitution.

**3. BACKGROUND**

- 3.1. Members will recall that the scheme of delegation which applied to planning and related applications was last confirmed in September 2015 with a minor amendment made subsequently in April 2016 to confirm that floodlight columns over 6m high were not to be approved under delegated powers.
- 3.2. Members will be aware that officers do not wish to be determining applications where Members consider that they should be involved. The scheme of delegation is thus designed to allow delegation to operate at a level that balances the efficiencies, cost and time savings associated with increased delegation against Members retaining sufficient oversight and ability to call in applications.

**Permission in Principle and Technical Details consent**

- 3.3. On 1 June 2018 a new kind of planning application will be introduced by Government. Its purpose is to speed up the planning process for small scale housing development proposals by enabling a developer to apply for a Permission in Principle (PIP) decision which determines whether housing can be built on a site and the maximum and minimum number of houses.
- 3.4. PIP will only apply to proposals for between 1 and 9 units and on land of less than 1 hectare in area. A PIP cannot be issued on sites where the Habitats Directive applies, nor where the development requires an Environmental Impact Assessment. No conditions, section 106 or CIL can be applied when issuing a PIP decision. It is important also to note that PIPs may also be considered through the Policy making arm of the council having particular regard to the Brown Fields register. This aspect of PIP is not being considered in this report as it does not have implications for the role of the Area Planning Sub-Committees in determining planning applications. At present the Brown Fields register does not include any sites that would be eligible for PIP.

- 3.5. If a PIP is granted by the council a second follow up application for Technical Details Consent (TDC) will be necessary. If this is granted then the PIP and TDC will together have the effect of granting full planning permission.
- 3.6. TDC includes provision of infrastructure, open space, affordable housing, and matters of design, access, layout and landscaping. The Local Planning Authority can refuse technical details if they are not deemed to be acceptable for “justifiable reasons” but cannot revisit the principle of housing as this would have already been determined by the PIP. A planning appeal may be lodged at either the PIP or TDC application stages by the applicant should a refusal be issued or the application fail to be determined within the statutory period.
- 3.7. The government believe that the new types of application will speed up dealing with small scale housing developments and assist developers in establishing whether sites are suitable for housing without incurring all the costs associated with obtaining outline planning permission. It is unknown at this stage what the take up on this new kind of application will be and whether developers will find it of use. Officers believe that sites within settlement boundaries and conforming to the Development Plan already have in effect an in principle acceptance by the council that they are potentially suitable for development and as such it may be that the take up of PIPs is limited. The government advice is that PIPs should be determined in accordance with the development plan and the NPPF.
- 3.8. A key concern with these new application types is that both stages have been given a short five week determination period within the legislation. Consultees at each stage are given only 14 days to comment (21 is normally given on planning applications). This ambitious target brings with it a challenge in respect of how it fits with the monthly cycle of Sub-Committee meetings and Parish/Town Council meetings. We propose to write to Town and Parish Councils advising them that we have no control over this shortened period and that they may wish to consider arrangements to expedite a response such that their views can be considered within the five week period for determination.
- 3.9. Some other types of planning submissions, notably some forms of Prior Approval, have limited time for consideration and the scheme of delegation thus gives the power of determination to officers to ensure that targets can be met. It is considered that a similar arrangement is required for the PIP and TDC applications as it will be near impossible to ensure that they are determined within five weeks if the decision needs to be taken by one of the Area Planning Sub-Committees. The relevant legislation allows for a time extension to be agreed in writing with the applicant, but it is doubtful how willing an applicant would be to agree to this when they will have selected the PIP route precisely because of its shorter timetable and simpler process.
- 3.10. Currently, the determination of standard planning applications is delegated to officers subject to the normal call-in/exception regime. Accordingly, at present this scale of residential development is not normally considered by one of the Sub-Committees unless cases are referred to a Sub-Committee or the local council view is at odds with the intended recommendation. It is envisaged that the request that PIP and TDC applications are delegated will not involve many cases, and the only change from the current circumstances will be that the ability for members to call these new types of application to a Sub-Committee or where the views of the Town or Parish Council are at odds with the intended recommendation will not exist, as that would take it outside the five week timeframe for determination.

## Further Clarification

- 3.11. As part of its ongoing drive to speed up decision making the Government has introduced a whole series of developments that are essentially “permitted development” but where a light touch “prior approval” application is required before the development can be implemented. The material factors which can be considered in such applications exclude the principle of the development and are limited to such matters as highway safety, flood risk etc thereby excluding the vast majority of usual planning issues and policies. The shorter timeframes for determining such applications mean that they are already covered by the scheme of delegation.
- 3.12. However an inconsistency has recently come to light whereby the scheme of delegation as a whole gives the right for a prior approval application to be dealt with under the scheme of delegation, but in the specific instance of telecommunication masts the scheme as currently framed can be read that the ability to determine such prior approval for mast proposals would not be delegated. The provision as regards masts was intended to ensure that it did not apply to the larger masts (where full planning consent is required) but the ambiguity means that it can be read that prior approval mast proposals would also need to come before Members. However if it were operated as such it would result in a deemed approval for all cases where the date of the next meeting did not allow it to be tabled within the determination period. The Scheme of delegation has thus been clarified to make clear that it applies to Planning Applications and not Prior Approvals.
- 3.13. In a similar clarification it has been standard practice for many years for Officers to comment upon proposals that the County Council makes to itself to undertake works to its schools/land (Regulation 3 and 4 applications). In that this Council is only a consultee and not determining the proposals - but merely advising almost as a Parish Council would do with a normal planning application, this seems appropriate but the practice is not explicitly covered in the scheme of delegation. This has been rectified.
- 3.14. Members will also be aware that they have recently been asked to authorise the advertisement process associated with the diversion of footpaths. In that this is not a decision on the merits of any such proposal but merely authority to advertise that a diversion application is in process the matter would be more appropriately delegated to officers as essentially there is no actual decision to take.
- 3.15. Finally Members will be aware that as part of the Government’s ‘Planning Guarantee’ applicants are entitled to receive their fee back if an application takes over six months to determine and they have not acceded to an extension of time. The greatest risk of this happening is where an application has been the subject of a resolution to approve subject to a legal agreement. This agreement may take some months to conclude and the risk is that having undertaken all the work on the planning application and legal agreement the developer could at any time after the period has expired require the refund of the fee or use the prospect of that as a negotiating tool in framing the terms of the I06. Officers are thus seeking a delegation that where the LPA is at risk of this occurring any resolution to approve subject to a I06 additionally delegates to officers the right to determine (most usually refuse) the application if that is necessary.
- 3.16. For ease of reference, the [Appendix](#) shows the existing scheme of delegation with the changes proposed further to this report shown as shaded text. The new provisions are referenced as PDM19 – 22 inclusive and are on the [final page](#) of the Appendix; and the other minor alterations are to (a) and (d) of PDM4 on [page 8](#).

#### **4. ALTERNATIVES**

Members could decide not to consider any variations. However this would leave the potential for deemed approvals of PIP and Prior Approval mast applications or undertaking considerable work for no income if fees subsequently have to be refunded.

#### **5. FINANCIAL IMPLICATIONS**

The 106 delegation will reduce the financial exposure of having to return fees where time limits expire. Not reporting footpath diversion advertisement proposals will result in a time and cost saving in not requiring the associated committee report

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Background Papers:

None

Scheme of Delegation  
Enforcement - Planning Functions

Function	Delegated by:	Delegated to:
PE1.	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/ Head of Planning & Strategic Housing
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 & 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 & Strategic Housing
PE5.	To serve Enforcement Notices.	Development Control Committee  Head of Planning & 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 & 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	Development Control Committee  Head of Planning & Strategic Housing

	<b>Function</b>	<b>Delegated by:</b>	<b>Delegated to:</b>
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 & 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	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 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 & 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 & 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 & Strategic Housing

### Trees - Planning Functions

	<b>Function</b>	<b>Delegated by:</b>	<b>Delegated to:</b>
PT1.	In cases of urgency the making of Tree Preservation Orders	Development Control Committee	Head of Planning & Strategic Housing
PT2.	Authority to confirm unopposed Tree Preservation Orders	Development Control Committee	Head of Planning & 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. (Subject, in the case of a refusal recommendation, to prior consultation with the Ward Member(s)).	Development Control Committee	Head of Planning & Strategic Housing/ Development Manager

	<b>Function</b>	<b>Delegated by:</b>	<b>Delegated to:</b>
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 / Head of Planning & Strategic Housing
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 & Strategic Housing/ Development Manager
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 & Strategic Housing/ Development Manager
PT9	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 & Strategic Housing/ Development Manager

### Development Management - Planning Functions

	<b>Function</b>	<b>Delegated by:</b>	<b>Delegated to:</b>
PDMI	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
PDM2	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	Development Manager

	Function	Delegated by:	Delegated to:
PDM3	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	Development Manager
PDM4	<p>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 Conditions (S73) or Prior Approval under the General Permitted Development Order under delegated powers, with the following exceptions:-</p> <p>(a) <b>Planning</b> Applications which within 21 days of the date of registration any District Councillor requests (in writing) that it be determined by the Committee/Sub-Committee, stating the planning reasons for such referral</p> <p>(b) 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.</p> <p>(c) Applications submitted by or on behalf of the Council or which, in the opinion of a Strategic Director or the Head of Planning and Strategic Housing, affect Council owned land and/or buildings.</p> <p>(d) Applications for floodlight masts exceeding 6m in height when operational <b>and Planning</b> Applications for telecommunications masts (with the exception that additional antennae may be allowed provided that the Government's safety guidelines are met)</p> <p><b>(NB Applications for telecommunication masts under the 'prior approval' process can be determined under delegated powers, in accordance with PDM4 above)</b></p> <p>(e) 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.</p> <p>(f) 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</p> <p>(g) Applications which the Head of Planning and Strategic Housing or Development Manager, considers should be referred to the appropriate Area Planning Sub-Committee for determination.</p> <p>(h) 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)</p> <p>(i) Applications submitted within one year of a dismissed</p>	Development Control Committee	Head of Planning & Strategic Housing/ Development Manager

	Function	Delegated by:	Delegated to:
	<p>appeal on the site where it is intended that the application be approved (other than where the approval would reflect the clear views of the Inspector when determining the initial appeal)</p> <p><b>Notes regarding PDM4:</b></p> <p>1) The restrictions set out in categories (a) to (i) above shall not apply to applications for a resubmission of an extant valid planning permission or to applications where the principle of 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 (a) to (i) 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 meeting date, it is not possible to deal with an application within the statutory period, then the application shall be referred to the Committee/Sub-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 Head of Planning and Strategic Housing shall report details of all Planning applications determined under delegated powers to Members of the appropriate Area Planning Sub-Committee.</p>		
PDM5	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	Head of Planning & Strategic Housing
PDM6	Authority to determine that a particular planning application or other matter shall be referred to the Development Control Committee for decision.	Development Control Committee	Head of Planning & Strategic Housing or Development Manager

	<b>Function</b>	<b>Delegated by:</b>	<b>Delegated to:</b>
PDM7	Authority to deal with complaints about High Hedges under Part 8 of the Anti-Social Behaviour Act 2003.	Development Control Committee	Head of Planning & Strategic Housing or Development Manager
PDM8	To determine discharge of conditions applications, Minor and Non Material Amendments	Development Control Committee	Development Manager/Case Officer
PDM9	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	Development Control Committee	Head of Planning & Strategic Housing
PDM10	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
PDM11	To determine, 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 & Strategic Housing
PDM12	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
PDM13	The power to withdraw Article 4 Directions where it is no longer expedient to remove permitted development rights.	Development Control Committee	Head of Planning & Strategic Housing
PDM14	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	Development Manager
PDM15	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	Development Manager
PDM16	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	Development Manager

	<b>Function</b>	<b>Delegated by:</b>	<b>Delegated to:</b>
PDM17	Authority to submit observations on Traffic Orders to the Highway Authority.	Development Control Committee	Development Manager
PDM18	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	Head of Planning & Strategic Housing or Development Manager
PDM 19	To determine applications for Permission in Principle and Technical Details Consent	Development Control Committee	Development Manager
PDM 20	To determine applications where there is the potential for the application fee to be refunded as no extension of time has been agreed, and there is insufficient time to return the matter to the Committee/Sub-Committee	Development Control Committee	Development Manager
PDM 21	To advertise applications for footpath diversions	Development Control Committee	Development Manager
PDM 22	To respond to Oxfordshire County Council in respect of Regulation 3 and Regulation 4 proposals (where the County Council is applying to itself)	Development Control Committee	Development Manager

### **Conservation Areas - Planning Functions**

	<b>Function</b>	<b>Delegated by:</b>	<b>Delegated to:</b>
PCI.	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 & Strategic Housing

#### NOTES

1. Where under any delegation consultation should be undertaken with the local member this should be i) by e-mail; and ii) for a period of three days and the delegation should only be undertaken after that period has expired and where there is no disagreement between members in multi member wards. No response will be taken as an agreement to the suggested action.
2. Changes to Officer titles, onward delegation and minor drafting changes to ensure that delegations operate at the most appropriate level are authorised without referral back to the Development Control Committee.