

BROMSGROVE DISTRICT COUNCIL

PLANNING COMMITTEE

28th MARCH 2011

**CONSTITUTIONAL AMENDMENTS TO SCHEME OF DELEGATION FOR
PLANNING ENFORCEMENT AND DEVELOPMENT CONTROL**

Responsible Portfolio Holder	Councillor G. N. Denaro
Responsible Head of Service	Mrs. Claire Felton Head of Legal, Equalities and Democratic Services
Non-Key Decision	

1. SUMMARY OF PROPOSALS

1.1. The purpose of this report is seek Member approval to a number of changes to the Scheme of Delegations insofar as it affects Development Control, Planning Enforcement and the arrangements for Calling in Planning Applications.

2. RECOMMENDATIONS

2.1. That Members recommend to full Council that the amendments to the Scheme of Delegations as set out in Appendices 1 to 3 of this report be adopted.

3. BACKGROUND

3.1. The Council as a local planning authority has powers and primary responsibilities for development control and planning enforcement action under various legislation including the Town and Country Planning Act 1990 ("TCPA") and the Planning (Listed Buildings and Conservation Areas) Act 1990 ("Listed Buildings Act"). The Council is also expected to carry out its duties expeditiously within a reasonable timeframe. In addition, there are statutory time limits within which applications should be determined. There are several areas within the planning service where powers can be delegated to officers to improve the efficiency and speed of the determining applications and dealing with enforcement issues.

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- 3.2. The aim of the scheme of delegation is to give more flexibility to officers to enable the Council to determine applications expeditiously in accordance with statutory deadlines and Government advice and to free the committee to deal with more serious matters. Also, it is to enable the Council as a whole to deal more quickly and efficiently with breaches of planning and any related complaints.
- 3.3. The changes have also been made to align the Council's scheme of delegation with that of Redditch Borough Council (RBC) in so far as is possible to assist the process of shared services. In RBC's scheme of delegation, all delegated powers for functions under the 'Planning and Associated Legislation' (as defined in RBC's constitution) are considered to fall within the delegated scheme. RBC's scheme then sets out the matters which must go to committee. The Council's scheme expressly sets out certain delegated powers although the introductory paragraphs to the scheme make it clear that the list of delegated powers is not an exhaustive one. In particular, officers make numerous decisions which are considered to be part of their day to day operational activities as set out in paragraph 3 of the introductory powers to the Scheme of Delegations.
- 3.4. The changes also aim to clarify what can be dealt with by planning officers and what must be reported to members. Members and officers, through the Head of Planning and Regeneration, will continue to be able to, regardless of the existence of delegated powers, refer any application to the Planning Committee. The amended documents are set out in Appendices 1 to 3.

4. KEY ISSUES

Scheme of Delegations (Appendix 1)

- 4.1. The main change relates to the procedure for calling-in applications as set out at paragraphs 6 and 7 of Appendix 1. Members have the right to call in applications, which would otherwise be delegated, to be determined by planning committee. The amendments set out a procedure for exercising that calling in power. The new procedure is to assist everyone involved in the process for deciding planning applications. In particular officers believe that the changes will:-
- give officers time to prepare and deal with any issues which members may have with the application or the officer's report,
 - give officers and the Chair of the Planning Committee sufficient notice of the call-in request and reasons

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- encourage members to deal timeously with any applications and ensure that they consider any relevant planning issues
- assist the applicant and members of the public by allowing officers to give sufficient notice of the calling-in of an application.

4.2. Members are sent a weekly list of planning applications either by e-mail or post. The intention is for members to decide whether or not to call-in applications within 21 days of receiving notification as set out in that list. Late applications for call-in will be considered by the chairman as set out in paragraph 7.2.

Development Control (Appendix2)

Applications and Appeals

- 4.3. The thresholds for applications to be determined by the Planning Committee have been amended (Page 3 of Appendix 2). The main change is that the need for applications on sites of 1 hectare or more (or in the case of residential development 0.5 hectare or more) to be determined by committee is removed. This will align the thresholds in BDC with the thresholds applied under the RBC scheme of delegations. The amendments also pull together other criteria, which are already contained in different places throughout the Council's constitution, for determination by committee so that they can appear in one place, for ease of reference.
- 4.4. Amendments are made to allow officers to impose conditions, after the Planning Committee meeting, when applications have been approved contrary to officer recommendation (page 3 Appendix 2). When members approve an application contrary to officer's advice they are usually asked to set out conditions that should apply to the permission, if they have not done so during their discussions. However it is possible that the need for a certain conditions may be overlooked by both the members and the planning officers attending the meeting. If the condition is in accordance with legislation and Government guidance, including the requirement for it to be necessary for the development and relevant to planning, the amendment makes it clear that planning officers have the power to impose conditions. This may also be seen as part of officers' day-to-day powers.
- 4.5. Amendments at page 4 of Appendix 2 (Appeals) make it clear that officers can take all necessary action to defend the Council's decision where there has been an appeal against a refusal to grant permission or consent or against a condition imposed on a consent or permission. This includes amending the Council's case, especially if advised to so by Counsel.

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Again, this is a matter of clarification since this can be seen to be part of the day to day powers of the officers. A similar delegation has also been added to the Planning Enforcement Scheme of Delegations.

- 4.6. With reference to declining planning applications (Page 5 Appendix 2), under sections 70A and 70B TCPA and 81A and 81B, the Council has the power to decline to determine an application if a similar application (meaning an application for essentially the same development on the same land) has in the last 2 years been refused by the Secretary of State or refused by the Council and either an appeal against the refusal has been dismissed by the Secretary of State or the applicant made no appeal against the refusal. The Council can also refuse to determine an application if a similar application has either been submitted at the same time or a similar application is still being determined by Council (before the statutory time limit) under appeal or where the application has been refused, where there is still time to appeal the refusal (so called "twin-tracking").
- 4.7. The Council can exercise the power to refuse to determine the later or duplicate application if there has been no significant change in the development plan or any other material planning consideration. The power can also be exercised in respect of an application for planning permission or listed building or Conservation Area consent. The power is discretionary and can be judicially reviewed. The amendments to the scheme give officers delegated powers to exercise this power. As notification to the applicant to exercise this power needs to be given within the statutory time period for determining the later application (to avoid an appeal against non-determination preventing use of this power), it would be useful for officers to have this delegated power to decline to determine applications.
- 4.8. Officers already have delegated powers to approve applications for minor amendments to approved schemes. The amendment is for clarification and replaces the word 'approve' with 'determine' as the latter is considered to be more accurate.

Section 106 Obligations

- 4.9. Amendments are also made to the parts of the scheme that relate to section 106 obligations (Page 2 Appendix 2). Firstly the amendments make it clear that the delegated powers relate to both Agreements and

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Unilateral Undertakings. Both documents contain planning obligations and are delivered as deeds. The difference is the Council is a party to the agreement, which can be useful if there are mutual negotiations or the Council needs to give any covenants, while the undertaking is a unilateral offer by the landowner and/or developer, which does not need to be signed by the Council. Both types of documents are equally enforceable by the Council.

- 4.10. In addition to the delegated powers that already exist the amendments give officers delegated powers to deal with applications or requests for the modification or discharge of planning obligations. The delegated power does not relate to the amendment of any heads of term approved by the Planning Committee, a significant change in financial contribution, any restriction, the overall area of land to be transferred to the authority or any positive obligation by the land owner. It is intended to allow officers to deal with minor variations required by the practicalities of the scheme.
- 4.11 The amendments also allow officers to take action to enforce planning obligations. This would usually be by court action. The amendments also make it clear that the Head of Planning Regeneration is responsible for negotiating all substantive planning matters such as financial contributions, affordable housing, open space etc while the Senior Solicitor is responsible for the drafting and execution of the document.

Other Powers and Minor Amendments

- 4.12 The amendments also cover a number of other powers which are not expressly dealt with in the current Scheme of Delegations. Members are referred to page 5 of Appendix 2 as follows:

4.13 Advertisements

The amendments give delegated powers to officers through the Head of Service to determine applications for advertisement consent, where one is required. There are other categories of advertisements that either do not require consent or are granted deemed consent under the Town and Country Planning (Control of Advertisements) Regulations 2007 ("Advertisement Regulations").

4.14 Revocation or modification

This introduces a delegation to Head of Planning and Regeneration to revoke or modify a planning permission that has already been granted.

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Local planning authorities can exercise these powers if it appears expedient for them to do so having regard to the development plan and other material considerations. Use of the powers involve a formal procedure and the relevant land owner (or indeed anyone with an interest in the land) would have a right to claim compensation from planning authority. The powers are exercisable in respect of planning permissions, listed building consents and conservation area consents.

It is not possible to revoke a permission or consent once the permitted building has been completed and any order revoking a permission or consent will not apply to any work that has been carried out before making of the order. For building works that have already been carried out, it is also possible to require a developer to remove buildings or works via a discontinuance order under section 102 TCPA. A discontinuance order also attracts a claim of compensation. The amendments to the scheme do not include delegated powers to issue a discontinuance order.

Although the use of these powers are potentially controversial, occasionally a developer either requests or is agreeable to revocation of a permission where it would facilitate a more up to date development scheme. An example is where the possibility of the implementation of a previous permission would justify the refusal of an application. In these cases, it is useful for officers, through the Head of Service, to be able to deal with such requests via delegated powers.

4.15 Completion Notice

This introduces a delegation to Head of Planning and Environment to serve a completion notice. A completion notice can be served by a local planning authority, under section 94 of the TCPA, stating that if the development is not completed within a specified period, the planning permission will cease to have effect. It can only be served if the development has commenced within the period for implementation and the period for implementation (usually 3 years) has expired. It should only be served if the authority is of the opinion that the development will not be completed within a reasonable period.

- 4.16 Members are referred to the delegation for prior notification procedure on page 1 of Appendix 2. A minor amendment is made namely that the delegated power now includes telecommunications development as well as agricultural and forestry. The power relates to the permitted development rights for certain types of agricultural, forestry and

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telecommunication development. When the development reaches a certain threshold, the developer must, notwithstanding the permitted development rights, apply to the local planning authority for a determination as to whether prior approval will be required for the development to give the authority a chance to control certain aspects of the development. When such an application is received, the authority has the right to ask for further details.

- 4.17 There has also been a correction. The power to determine applications for a Certificate of Lawfulness, which currently appears in both the schemes of delegations for Development Control and Planning Enforcement, has been amended so it only appears in the Development Control scheme. The power is delegated to the Head of Planning and Regeneration.

Planning Enforcement (Appendix 3)

- 4.18 One of the aims of the amendments to the Planning Enforcement Scheme of Delegation is to give officers greater flexibility in the way they work by allowing more breaches of planning control to be actioned without the need for prior referral to Planning Committee. The current system of referral to Planning Committee can cause delay to formal enforcement action being commenced. One of the main changes is the addition of delegated powers to issue Enforcement Notices and Breach of Condition Notices. One difference between the two types of notices is that there is no right of appeal against a Breach of Condition Notice. It is possible to issue Enforcement Notices in response to breaches of condition as well as unauthorised development.
- 4.19 In the current scheme, such notices can only be issued by officers in cases of urgency when reporting to the Planning Committee is impractical. It is considered that the present arrangement can delay enforcement and can also burden the committee with matters that can be adequately dealt with by officers. Controversial or complicated cases can continue to be reported to committee and the greater use delegated powers will be complimented by regular quarterly updates to members of enforcement matters.
- 4.20 Separate files are opened when a complaint is received about a potential breach of planning control and officers frequently decide without reference to the committee that it is not expedient to take enforcement action. It is not considered that a separate power of delegation is required for this as it falls under officers' day to day operational activities

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in dealing with complaints. However from time to time, officers may decide to report controversial or high profile matters to members even if they are of the opinion that it is not expedient to take enforcement action.

- 4.21 The amendments also include delegated powers to seek an injunction against the breach of planning control (page 1 of Appendix 3) and to serve a section 215 notice (page 3 of Appendix 3). In relation to injunctions, the current scheme only contains a delegated power where the matter is urgent. In relation to section 215 Notices, Local planning authorities have the power to serve these notices to require proper maintenance of land when the condition of land is adversely affecting the amenity of the local area. Delegated powers will enable officers to deal efficiently and quickly with unsightly land. Even if a notice is not served, the existence of such powers can encourage a land owner to clean up the land and having to wait for a committee meeting can encourage delay and have adverse consequences for other members of the public. High profile, controversial or complicated matters can continue to be reported to the Planning Committee.

Advertisements

- 4.22 There are several actions that a planning authority can take against unauthorised advertisements including prosecution or removing or obliterating certain advertisements. Action must be taken in the interest of amenity and public safety. The amended scheme (Page 3 Appendix 3) proposes reserving the power to issue discontinuance notices against deemed advertisements to Members but includes delegated powers for officers to use other statutory powers to deal with unauthorised advertisements. This would reduce potential delays in dealing with unauthorised advertisements that are damaging to the planning environment.

Other Amendments

- 4.23 Finally the delegated power to issue Article 4 directions is widened to include all circumstances (Page 1 Appendix 3). The current scheme restricts the power to cases of sub-division of plots. There does not appear to be a current need for this distinction. Members will be aware that local planning authorities can make Article 4 directions to restrict permitted development in certain circumstances. Throughout the Appendices the name of the head of service for planning has been changed from the "Head of Planning and Environment Services" to the "Head of Planning of Regeneration".

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5. FINANCIAL IMPLICATIONS

- 5.1. There are no substantial financial implications for these proposals. There may be a small reduction in administration, particularly the writing of committee reports and the attending of committee meetings by officers, which would result in some staff time savings. It is however still necessary to keep a properly reasoned record when taking delegated decisions.
- 5.2. There may also be a reduction of the risk of appeals against non-determinations if officers are given delegated powers to determine more applications. However members will be aware that under the current system every effort is already being made to ensure that applications are being determined within statutory deadlines.

6. LEGAL IMPLICATIONS

- 6.1. The main legislation which are relevant to these changes are:
 - Section 101 of the Local Government Act 1972 whereby a local authority may arrange for discharge of any of its functions by an officer or a committee.
 - The Local Authorities' (Functions & Responsibilities) Regulations 2000 under which the Council's town and country planning functions are reserved to full Council.
 - The Town and Country Planning Act 1990
 - The Planning Listed Buildings and Conservation Areas) Act 1990. The above two Acts (as amended) contain the planning functions dealt with in the amendments to the Planning Enforcement and Development Control Scheme of Delegations.
 - Circular 11 of 1995: 'The Use of Conditions in Planning Permissions' is relevant to the amendments which deal with the imposition of conditions.
- 6.2. There are no perceived legal implications arising from these amendments over and above the normal legal implications of any Council decision, whether or not it is made under officers' delegated powers or by committee. Although not every planning action can be set out in the Scheme of Delegations and some actions must be considered to be part of officers' day to day operational activities, it is considered clearer to set out, as far as is possible, which major functions can be dealt with by officers and which must be sent to committee.

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7. POLICY IMPLICATIONS

7.1 The scheme of delegation, and the proposed amendments, exist alongside the implementation of planning policy, including the Local Plan, the supplementary planning guidance and the draft Core Strategy. A proposed enforcement policy is also being reported to Members at this meeting. The scheme assists in the delivery and implementation of the Council's strategic planning policy.

8. COUNCIL OBJECTIVES

8.1 The amendments would support the Council's objectives and the continuous improvement of development control and planning enforcement to the benefit of the Environment. In addition, it is considered that the amendments will have a positive effect on the Council's Improvement and Regeneration objectives by improving the efficiency of its response to applications for permission or consent and enforcement-related complaints.

9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS

9.1 There are no risks identified above the usual issues involved in Council decision making. The full Council has the power to change the Scheme of Delegations and the proposed amendments are being reported to Council for noting and discussion.

10. CUSTOMER IMPLICATIONS

10.1. It is considered that the amendments to the Scheme of Delegations will have a positive effect on customer services. It will enable the Council to deal with applications and enforcement issues more speedily. It will also provide clarity to members of the public regarding decision making.

11. EQUALITIES AND DIVERSITY IMPLICATIONS

11.1 None identified

12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT

12.1 The amendments are unlikely to have significant implications in these respects. However it is considered that the attempts to align RBC and the Council's scheme of delegations will make it easier for planning officers to work across both Councils which have a positive effect on the

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above issues. It is also considered that delegated decisions where preferable would represent a better use of the officer's time than writing reports and attending committee and the committee's time in avoiding the need to deal with matters that could easily be dealt with by officers.

13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY

13.1 The amendments will facilitate the implementation of the Council's strategic planning policies regarding these issues.

14. HUMAN RESOURCES IMPLICATIONS

14.1 As stated in 10 above, aligning RBC and the Council's scheme of delegations will make it easier for planning officers to work across both Councils and delegated decisions where preferable would represent a better use of the officers' and the committee's time.

15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS

15.1 None Identified

16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF CRIME AND DISORDER ACT 1998

16.1 None identified

17. HEALTH INEQUALITIES IMPLICATIONS

17.1 None identified

18. LESSONS LEARNT

18.1 There are no significant lessons learnt. Three corrections have been made relating to the Prior Notification Procedures, Minor Amendments and Certificates of Lawfulness.

19. COMMUNITY AND STAKEHOLDER ENGAGEMENT

19.1 The proposed changes have been discussed with the portfolio holders for Planning and Regeneration and Resources and with various Council officers. There has been no consultation with the general public.

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20. OTHERS CONSULTED ON THE REPORT

20.1 Please include the following table and indicate 'Yes' or 'No' as appropriate. Delete the words in italics.

Portfolio Holder	Yes
Chief Executive	No
Executive Director (S151 Officer) (must approve Financial Implications before report submitted to Leader's Group/Portfolio Holders Briefing)	No
Executive Director – Leisure, Cultural, Environmental and Community Services	No
Executive Director – Planning & Regeneration, Regulatory and Housing Services	No
Director of Policy, Performance and Partnerships	No
Head of Service (i.e. your own HoS)	No
Head of Resources (must approve significant HR Implications before report submitted to Leader's Group/Portfolio Holders Briefing)	No
Head of Legal, Equalities & Democratic Services (for approval of any significant Legal Implications)	No
Corporate Procurement Team (for approval of any procurement implications)	No
Senior Solicitor	Yes
Head of Planning and Regeneration	Yes

21. WARDS AFFECTED

21.1 All

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22. APPENDICES

- 22.1 Appendix 1 – Amended Scheme of Delegation – Introductory Paragraphs
- 22.2 Appendix 2 – Amended Scheme of Delegation - Development Control
- 22.3 Appendix 3 – Amended Scheme of Delegation – Planning Enforcement

23. BACKGROUND PAPERS

- 23.1 Current Scheme of Delegations for Introductory Paragraphs, Development Control and Planning Enforcement

24. AUTHOR OF REPORT

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