

PLANNING DEVELOPMENT CONTROL COMMITTEE

18 NOVEMBER 2010

CHANGES TO THE SCHEME OF DELEGATION TO OFFICERS AND OTHER  
ADMINISTRATIVE MATTERS

REPORT OF HEAD OF DEMOCRATIC SERVICES

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RECENT REFERENCES:

[PDC781](#) – Sub-Committees Procedures and Minor Changes to the Constitution – 11 December 2008

EXECUTIVE SUMMARY:

This report recommends a number of changes to the Scheme of Delegation to Officers within the Council's constitution. In summary, this sets out the trigger mechanism for items to come to the Planning Development Control Committee and changes to the way the Council deals with telecommunications and tree works applications.

The report also sets out a number of issues for consideration which were discussed at the annual Informal meeting of the Planning Development Control Committee, held on 21 October 2010, principally relating to site visits by the Committee.

RECOMMENDATIONS:

- 1 That the alterations to the Scheme of Delegation to Officers as set out in Appendix 1 be approved.
- 2 That the procedure for "pre-emptive" site visits as set out in paragraphs 2.10-2.12 be approved.
- 3 That the Planning Development Control (Telecommunications) Sub-Committee be disbanded (paragraph 5.5 refers).
- 4 That the procedure regarding Ward Member deputations, who are unable to attend the Committee, as set out in paragraph 3.1 be approved.
- 5 That the above clarifications and changes be drawn to the attention of all Members via the Members' Briefing Note.

## PLANNING DEVELOPMENT CONTROL COMMITTEE

18 NOVEMBER 2010

### CHANGES TO THE SCHEME OF DELEGATION TO OFFICERS AND OTHER ADMINISTRATIVE MATTERS

Report of Head of Democratic Services

#### DETAIL:

#### **1 Introduction**

- 1.1 An informal meeting of the Planning Development Control Committee was held on 21 October 2010 to discuss a number of changes to the Scheme of Delegation and a number of minor changes and issues requiring clarification on the operation of the Committee. The conclusions of this meeting are set out below for the Committee to formally consider and endorse where appropriate.

#### **2 Site Visits**

- 2.1 The informal meeting sought clarification on the position of non-City Council representatives at site visits and City Council Members who had not attended site visits. Following a discussion on these issues, the informal meeting recommended no change to the current practice and the following paragraphs 2.2-2.8 are for clarification only.

##### Attendance of Non-Winchester City Council representatives

- 2.2 Following debate, the Informal Group agreed to continue the policy that only;
- the Committee,
  - relevant Ward Members,
  - officers, and
  - the applicant (see paragraph 2.4 below)

should be invited to site visits.

- 2.3 The Group agreed that the purpose of the site visits was for the Committee to familiarise themselves with the site and issues such as the relationship of the proposed development and neighbouring properties and/or access arrangements. Within that remit, there was no purpose in inviting those who were not involved in the decision-making process (such as County Council members, Parish Councils, amenity groups and neighbours) in addition to any health and safety/insurance issues that may arise.
- 2.4 Applicants were invited to facilitate access for the Committee to the site (which is usually private land) and to assist the Case Officer on any matters of fact that may arise. However, it was noted that any other parties were welcome to forward their concerns about an application to the Planning Case Officer and, where possible, the site visit would take these into account by (for example) viewing the site from neighbouring properties.

### Attendance of Planning Development Control Committee Members at Site Visits

- 2.5 The Head of Legal Services advised that there were no powers to exclude a Member from determining an application if they had not attended a site visit, as the site visit itself did not form part of the formal meeting.
- 2.6 However, it would be good practice for Members who have not attended the site visit, but later attend the formal meeting, to publicly explain why they consider themselves to have sufficient information to be able to determine the application. For example, a Member might not have voted in favour of a site visit, but may still participate in the final decision, as they consider that they are able to determine the application from the officers' presentation without first visiting the site.
- 2.7 It may also be possible for a Member to vote for a site visit, not attend the site visit, and yet still determine the application at the later public meeting. In these circumstances, it would be reasonable for the Member concerned to explain that they had voted for the site visit to enable other Members to appreciate, for example, the unique qualities of the area, whilst they were personally very familiar with the site and therefore did not personally need to attend.
- 2.8 However, the guiding principle should be that it is for the Member who had not attended the site visit to publicly explain the apparent paradox of why they consider themselves able to determine an application which the Committee had agreed was necessary.

### Pre-emptive Site Visits

- 2.9 The informal meeting agreed with the suggestion of the Head of Planning Management that it would be possible to anticipate that certain significant applications would benefit from a site visit, prior to determination at a formal meeting. It was therefore agreed that Members would be asked to reserve every Tuesday morning before each Thursday meeting of the full Planning Development Control Committee for such events.
- 2.10 The Head of Planning Management would, in consultation with the Chairman, identify such applications and the site visits would be held on these Tuesday mornings. The applications would normally be determined two days later at the full Planning Development Control Committee and they would be included, with all other applications before Committee, in the Schedule of Applications for that meeting.
- 2.11 Members and relevant Ward Members would be notified of these Site Visits in the week prior, although, as they did not form part of the formal meeting, they were not subject to the usual Access to Information provisions for Council meetings.
- 2.12 The informal meeting agreed that this new arrangement would prevent duplication of meetings, saving time for Members, officers and the public alike.

- 2.13 Members who had not attended these site visits would be subject to the same guidance set out in paragraphs 2.5-2.8 above. However, as the decision to call the site visit would have been that of the Head of Planning Management (in consultation with the Chairman), the Member may not be in a position to decide whether or not they have sufficient information to determine the application until after the officer's presentation.
- 2.14 However, the Committee should note that the quorum for the full Committee is four members, and the Tuesday site visits should therefore be attended by at least four Members of the Committee that will attend the subsequent formal meeting.
- 2.15 This new arrangement of effectively pre-empting site visits would not affect the Committee's power to refer any other applications to a meeting of the Planning Development Control (Viewing) Sub-Committee with site visit. However, it may now be possible to hold these meetings on the reserved Tuesdays.

### **3 Deputations from Non-Committee Members at Committee**

- 3.1 The informal meeting noted that there had been a number of occasions throughout the year when Ward Members not on the Committee wanted to make a deputation, but due to other commitments had been unable to attend the meeting in person. Following a discussion, the informal meeting agreed that such Members should be advised to request that a fellow Ward Member, or in their absence, a neighbouring Ward Member, should attend on their behalf. If the Ward Member fails to find another Member to attend and make the deputation on their behalf, the Ward Member's comments could be set out in the Update Sheet at the Member's request. These comments would not be read out by officers. Furthermore, these comments would not be read out by sitting members of the Committee to avoid the potential for challenges regarding pre-determination.

### **4 City of Winchester Trust**

- 4.1 The Chairman explained that he had been contacted by the City of Winchester Trust. The Trust had requested that they be permitted to speak in the un-used public participation element reserved for Parish Councils for applications in the un-parished area of Winchester Town. Whilst the Chairman underlined the valued contribution the Trust made via their comments on town-area planning applications; the informal meeting agreed that it would not be appropriate to permit the Trust to speak in place of a Parish Council, as it was not a tier of local government and to do so may encourage other residents' associations to make similar requests. The Trust could, of course, register to speak as an objector or supporter of any application.

### **5 Changes to the Scheme of Delegation**

- 5.1 The Head of Legal Services explained that a review of the Scheme of Delegation to Officers in the Council's constitution was a useful opportunity to update the Scheme to reflect current practice and to make changes to improve the efficiency of the Committee.

- 5.2 The main amendment proposed was to move from specific delegations to a more general delegation with specific exceptions, which mirror existing practice but which will avoid unnecessary trivial matters coming to committee simply because there is no delegated authority for it. This will not prevent Head of Planning Management putting an application on the committee agenda where he feels this is desirable in the circumstances.
- 5.3 The proposed changes also reflect the structural changes which have resulted in the creation of a Landscape Team which deals with various matters related to trees, which should either be transferred from the delegation to the Head of Planning Management, or be exercisable by the Head of Planning Management or the Head of Landscape and Open Spaces (see paragraphs 5.8 and 5.9 below).
- 5.4 Minor changes to the delegations to the Head of Legal Services in respect of lawful use certificates are also proposed.
- 5.5 The other main changes to the proposed Scheme of Delegation related to applications for telecommunications equipment and tree works applications.

#### Telecommunications Applications

- 5.6 With regard to telecommunications applications, the informal meeting agreed with the changes to the Scheme of Delegation (set out in Appendix 1), which effectively ensured that these would be treated like any other application, including the triggers to send them to Committee (or to a Planning Development Control (Viewing) Sub-Committee). This included prior notification applications (which were automatically deemed granted unless the Council objected within a time limit). However, in order to avoid such applications being inappropriately granted under the deemed procedure (because it had to be referred to Committee as it fell within one of the exceptions in Paragraph 1 of the Scheme, but a Committee could not be convened before the time limit expired) an emergency provision has been included as 2(vi) of the Scheme. This allows the Head of Planning Management to take the decision after appropriate consultation.
- 5.7 The informal meeting noted that the number of telecommunications applications had reduced dramatically from the early 2000s. Those that had come forward had not been controversial and therefore it was recommended that the Planning Development Control (Telecommunications) Sub-Committee be disbanded.

#### Tree Works Applications

- 5.8 It is proposed that decisions on applications for works to trees protected by a Tree Preservation Order be delegated to the Head of Planning Management and/or Head of Landscape and Open Spaces for determination, with the same triggers for Committee referral as all other types of planning application. There has previously been some lack of clarity as to how to deal with tree works applications as the current Scheme of Delegation does not specifically mention this type of application and the result has been that some uncontroversial tree work applications have been brought to Committee for decision.

- 5.9 Tree Preservation Orders will continue to be made under powers delegated to the Head of Planning Management and/or Head of Landscape and Open Spaces. Where following the making of a TPO one or more objections is received, the matter will be brought to Committee for a decision on whether the Order should be confirmed.

## **6 Planning Protocol**

- 6.1 The changes to the Scheme of Delegation are in line with the advice given in the Planning Protocol. The other matters in the report can be incorporated in the next review of the Protocol, which is likely to take place when new arrangements for Members' conduct are brought in by the Coalition Government.

### **OTHER CONSIDERATIONS:**

1. **SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):**

None specifically

2. **RESOURCE IMPLICATIONS:**

Costs associated with Member meetings.

3. **RISK MANAGEMENT ISSUES**

None

4. **BACKGROUND DOCUMENTS:**

None.

## Appendix 1

*The delegated powers in Section 6 of the Constitution to the Head of Planning Management shall be substituted by the following powers.*

### D HEAD OF PLANNING MANAGEMENT

1. Subject to 2, 3 and 4 below, decisions relating to any function delegated to the Planning Development Control Committee in the Scheme of Delegation (as set out in Part 3 Section 4 of the Constitution) (planning and listed building matters) shall be delegated to the Head of Planning Management except those in respect of applications where:

- (i) a Councillor registers a request that an application be referred to Committee by completing a standard form setting out material planning reasons and that the form be attached to the committee report;
- (ii) a relevant Parish Council registers a request that an application be referred to Committee, setting out material planning reasons in the request, but only where the Parish Council views are contrary to the intended decision of the officer;
- (iii) the Head of Planning Management considers the application to be for significant development and intends to grant planning permission for the application;
- (iv) the application is submitted by or on behalf of the Council, or includes Council-owned land, the Head of Planning Management intends to grant permission and one or more objections has been received;
- (v) six or more representations, which the Head of Planning Management considers relate to material planning considerations, are received from separate individual addresses which are contrary to the intended decision of the officer;

(NB for the purposes of this exception, a petition will be regarded as one representation, regardless of the fact that addresses may have been included as part of signing the petition – the Council's petition procedure specifically excludes planning applications);

- (vi) the application relates to a Member or relevant Officer (namely Directors, Heads of Teams, staff in the Planning Management Team and other staff who advise on planning matters) of the Council, in that the application:-
  - i.) has been submitted by them or on their behalf; or
  - ii.) affects land that they own or occupy; or
  - iii.) is one where they have made representations of support or objection and where (in respect of Members only) that representation would constitute a personal and prejudicial interest.

(NB under the Council's Planning Protocol all applications within this exception should be notified to the Head of Planning Management and Corporate Director (Governance).

2. The following matters shall be delegated to the Head of Planning Management subject to the exceptions stated:-
  - i.) Authority to issue Tree Preservation Orders, and to vary, modify or revoke such Orders.
  - ii.) Decisions on the confirmation of Tree Preservation Orders (with or without modifications) where no objections have been received or all objections which may have been received have been withdrawn.
  - iii.) Any action required in relation to High Hedges under the Anti-Social Behaviour Act 2003 or regulations (other than complaints involving land owned by the City Council, Members or Officers of the City Council).
  - iv.) In respect of hedgerows:-
    - (a) On receipt of a Hedgerow Removal Notice, authority to determine whether the hedge is important in accordance with the Hedgerow Regulations 1997), and;
    - (b) In the case of important hedges, to issue Hedgerow Retention Notices and Hedgerow Replanting Notices in accordance with the above Regulationsexcept (in both cases) in respect of hedgerows owned by the City Council, Members or Officers of the City Council.
  - v.) Authority, in consultation with the Chairman of Planning Development Control Committee (or in his/her absence, the Vice-Chairman of that Committee) to determine any application which would fall within the general delegation under 1 above (notwithstanding the fact that one or more of the exemptions may have been triggered), in cases where it would not be reasonably practicable for the matter to be dealt with by the Planning Development Control Committee within any period prescribed for decision.
  - vi.) Authority to divert a public footpath pursuant to Section 257 of the Town and Country Planning Act 1990.
3. Decisions on Certificates of Lawfulness shall not be delegated to the Head of Planning Management but shall remain delegated to the Head of Legal Services.
4. Decisions on issuing stop notices shall not be delegated to the Head of Planning Management but shall be dealt with under the existing delegated powers to the Chief Executive to take action in an emergency or (where meeting timetables permit) by decision of the Planning Development Control Committee.



*The following powers shall be included in Section 6 of the Constitution to the Head of Landscape and Open Spaces.*

#### E) HEAD OF LANDSCAPE AND OPEN SPACES

1. Authority to issue Tree Preservation Orders, and to vary, modify or revoke such Orders.
2. Decisions on the confirmation (with or without modifications) of Tree Preservation Orders where no objections have been received or all objections which may have been received have been withdrawn.
3. Decisions on action to be taken following service of notice on the Council under s.211 of the Town and Country Planning Act 1990 (trees in a Conservation Area).
4. Authority to determine applications for consent required under a Tree Preservation Order to carry out work to a protected tree except those in respect of applications where:-
  - a. a Councillor registers a request that an application be referred to Committee by completing a standard form setting out material planning reasons and that the form be attached to the committee report
  - b. a relevant Parish Council registers a request that an application be referred to Committee, setting out material planning reasons in the request, but only where the Parish Council views are contrary to the intended decision of the officer;
  - c. the application is submitted by or on behalf of the Council, or includes Council-owned land, the Head of Landscape and Open Spaces intends to grant permission and one or more objections has been received;
  - d. six or more representations, which the Head of Landscape and Open Spaces considers relate to material planning considerations, are received from separate individual addresses which are contrary to the intended decision of the officer;

(NB for the purposes of this exception, a petition will be regarded as one representation, regardless of the fact that addresses may have been included as part of signing the petition – the Council’s petition procedure specifically excludes planning applications);

  - e. the application relates to a Member or relevant Officer (namely Directors, Heads of Teams, staff in the Planning Management and Landscape and Open Spaces Teams and other staff who advise on planning matters) of the Council, in that the application:-
    - i.) has been submitted by them or on their behalf; or
    - ii.) affects land that they own or occupy; or
    - iii.) is one where they have made representations of support or objection and where (in respect of Members only) that representation would constitute a personal and prejudicial interest.

(NB under the Council's Planning Protocol all applications within this exception should be notified to the Head of Planning Management and Corporate Director (Governance).

5. Authority, in consultation with the Portfolio Holders for High Quality Environment and Communities, to agree the future release of money from the Open Space Fund for projects, worth up to £50,000.

6. In respect of hedgerows:-

(a) On receipt of a Hedgerow Removal Notice, authority to determine whether the hedge is important in accordance with the Hedgerow Regulations 1997), and;

(b) In the case of important hedges, to issue Hedgerow Retention Notices and Hedgerow Replanting Notices in accordance with the above Regulations

except (in both cases) in respect of hedgerows owned by the City Council, Members or Officers of the City Council.

7. Authority, in consultation with the Portfolio Holders for Rural Areas and Market Towns, and for High Quality Environment; and the local Ward Member(s), and the local Ward Member(s), to determine applications for grants for environmental improvement in rural areas, up to £5,000.

(periodic reports listing the grants made under this authority to be circulated to Members in an appropriate form).

*The delegated powers in Section 6 of the Constitution to the Head of Legal Services Management shall be amended by the substitution for paragraphs 14 and 15 by the following:*

#### Head of Legal Services

14. Decisions on applications for Certificates of Lawfulness for Existing Use or Development, in consultation with the Portfolio Holder for High Quality Environment (or in his/her absence the Leader of the Council) and Ward Councillors.

15. Decisions on Certificates of Lawfulness for Proposed Use or Development applications for determination.