



COUNCIL EXECUTIVE

PLANNING REFORM: A NEW SCHEME OF DELEGATION FOR THE DETERMINATION OF PLANNING AND RELATED APPLICATIONS

REPORT BY DEVELOPMENT CONTROL MANAGER

A. PURPOSE OF REPORT

The Planning Etc (Scotland) Act 2006 sets out a wide range of changes to the planning system. An accompanying report sets out the principal procedural changes. It is now a legal requirement on the council to review its current scheme of delegation of planning applications to take into account the statutory changes. This report describes a recommended approach that will embrace a 'statutory' scheme of delegation under the 2006 Act and an operational scheme of delegation under the Local Government (Scotland) Act 1973.

B. RECOMMENDATION

Its recommended that the Council Executive adopts the statutory and operational schemes of delegation as set out in this report and sends these to the Scottish Government for approval.

C. SUMMARY OF IMPLICATIONS

I Council Values	Being honest, open and accountable.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Town and Country Planning (Scotland) Act 1997. Planning Etc. (Scotland) Act 2006. Local Government (Scotland) Act 1973. Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. Planning (Hazardous Substances)(Scotland) Act 1997.
III Resources - (Financial, Staffing and Property)	An enlarged scheme of delegation which will allow proposals for 'local developments' to be determined by an appointed officer, allowing the Development Management Committee to concentrate on more major applications that are

contrary to the development plan.

IV Consultations

Legal Services.

D. TERMS OF REPORT

The existing situation

The council has been operating a scheme of delegation for planning and related applications under the Local Government (Scotland) Act 1973 since November 2003. That scheme works well and allows a large number of planning and related applications to be determined by the development control manager while the development control committee retains the ability to consider certain applications.

For information purposes details of the existing scheme are set out in Annex '1' to this report.

Members will recall that following the Anderson Report, some procedural changes have been introduced to the existing scheme from May 2009. These changes are incorporated into the revised scheme as set out in this report.

The revised schemes of delegation; general principles

The Scottish Government is clear that planning authorities, in preparing new schemes of delegation, should make the most effective use of powers to delegate decisions on straightforward local planning applications to officials, allowing elected members to focus on the more complex and controversial cases.

Decisions on local applications are to be made by an appointed officer. The 2008 Regulations define the 'appointed officer' as the person appointed under s43A(1) of the 2006 Act. Advice from the Scottish Government is that the 'appointed officer' should ordinarily be the person who is the usual signatory on the council's planning decision notices and, in this case, would be the development control manager. To align with the new provision, this post will be termed the development management manager from August 2009.

It is important to note that a key part of planning reform is the primacy of the development plan. In West Lothian, the West Lothian Local Plan has been adopted very recently and it is therefore the cornerstone of decision making. In compiling the schemes of delegation, regard has been had to the very up to date status of the development plan in West Lothian.

At present, the current scheme of delegation contains a series of 'triggers' that cause a planning application to be referred to the development control committee. To accord with the Government's overarching objectives of streamlining the planning process and planning reform, it is proposed that, in the case of the mandatory scheme for local developments, these triggers are revised upwards. Consequently, the automatic referral of an application will take place in a lesser number of circumstances.

Members will nevertheless be aware that any refusal of planning permission by the appointed officer under the mandatory scheme of delegation can be subject of a statutory review by the local review body.

The new planning regulations place enhanced responsibilities on West Lothian's community councils within the planning process. As such, community councils have a statutory role at the pre-application stage in the case of major applications. In the case of delegated local developments, the scheme of delegation recognises the importance of the role of community councils and thus provision is made for the views of a community council to be considered by the development management committee when at variance with the appointed person.

The 2006 Act contains a requirement for a statutory scheme of delegation of local applications only. Nonetheless it is permissible to have a second scheme of delegation in operation but based upon powers available to the council under the Local Government (Scotland) Act 1973. Given that the current scheme of delegation works well it is proposed to divide the scheme of delegation into two and have both a mandatory scheme of delegation (Part 'A') and an operational scheme of delegation (Part 'B') in place, as set out below.

This latter scheme will avoid the need for referring many additional items to the development control committee that are otherwise straightforward cases, as well as certain major applications, always with the provision for the case to be referred to the development management committee if so called by a ward member.

The 2008 Regulations set out in detail the procedural steps to be taken in preparing a scheme of delegation under the 2006 Act. Once agreed by the council, the scheme requires to be sent to Scottish Ministers and it cannot be formally adopted until approved by the Scottish Ministers. Thereafter it must be publicised in council offices and local libraries and on the internet. The scheme requires to be reviewed every 5 years.

The new delegation requirements under the 2006 Act The 'Part 'A' Scheme

An accompanying report sets out the principal changes to the way the council must handle planning applications from August 2009. Of particular relevance to the new delegation provisions is the classification of types of development being subject to national, major and local applications. Specifically, Part 3 of the Planning Etc. (Scotland) Act 2006, at section 43A (1), has introduced the requirement for a new statutory scheme of delegation for the determination of 'local applications'.

As set out in that accompanying report, the aim of the 2006 Act is to see 'local applications' being determined by an appointed officer but with the opportunity of a statutory review by a Local Review Body (LRB), comprising of members of the council. Thus the LRB can review any decision to refuse planning permission or to discharge any conditions imposed or any failure to determine a local application. This replaces the right of an appeal to Scottish Ministers in respect of local applications..

A second accompanying report sets out the details of establishing the council's LRB.

The Town and Country Planning (Schemes of Delegation and Local Review Procedure)(Scotland) Regulations 2008 set out the statutory basis for the revised scheme of delegation under the 2006 Act.

The statutory provisions expressly exclude certain types of local applications being dealt with by the appointed officer. These types of applications are those made by the council, an application made by a member of the council, an application relating to land owned by the council or an application on land in which the planning authority has a financial interest. As such these applications all require to be determined by the development management committee.

Section 43A(6) of the Act enables the council as 'planning authority' to determine an application that would otherwise fall to be determined under delegated powers. To comply with this section of the Act the mandatory Part 'A' scheme of delegation incorporates provisions for any individual member, in specified circumstances, to call for an application to be heard by the development management committee. If that application is then refused by the LRB, the appeal mechanism is via the Scottish Ministers.

Members will continue to receive a list of all planning applications received by the council on a weekly basis; this is in addition to the new statutory requirements on lists and registers of applications. Similarly the development management manager will prepare a weekly list of decisions on local applications (List 'A') and, in accordance with the procedural changes following the Anderson report, a local ward member can ask for that application to be referred to the development management committee.

In summary therefore the additional scheme introduced by the 2006 Act is intended to support an efficient planning process for local developments; the Scottish Government advises that it is up to individual councils to determine the criteria for delegation to officers and the regulations provide extensive scope to do so.

Details of the proposed scheme of delegation under section 43 of the 2006 Act are set out in Annex '2' to this report.

The delegation of other types of applications and decisions The Part 'B' Scheme

It is important to note that the new provisions relate only to applications for planning permission for local developments and do not relate to major or national developments, listed building consents, advertisement consents, conservation area consents or hazardous substances consents.

Accordingly and delegation for these types of applications can continue but will be made under the existing terms of the Local Government (Scotland) Act 1973, with a retention of rights of appeal in these cases to Scottish Ministers and not the Local Review Body.

Applications determined under this scheme will be subject to appeal to Scottish Ministers and not the local review body.

In revising the council's operational scheme of delegation under the 1973 Act there are two principal criteria that apply.

Firstly in the case of miscellaneous consents for listed buildings, conservation areas, hazardous substances and advertisements similar thresholds to those for local applications apply in order that an efficient and streamlined decision making process can operate. Members will of course retain the right to seek referral of such proposals to the development management committee.

Major applications are not subject to the mandatory scheme of delegation.

As such, the determination of all major applications that are 'significantly contrary' to the development plan have to be decided by the full council and not by a committee of the council. There is however a requirement for a mandatory hearing before a committee of the council, in this case the development management committee; the committee would then pass its recommendation to the full council for a final decision.

This procedure must apply to all cases where an application is significantly contrary to the development plan, even though the recommendation accords with the plan.

For major applications that are not significantly contrary to the development plan, it is recommended that the current provisions will broadly continue in order to ensure a streamlined and efficient decision-making process. Members will of course retain the right to call delegated major applications to the development management committee.

In addition to delegating certain decisions on related applications, the operation scheme of delegation also embraces a series of ad hoc powers such as tree preservation order issues, proposals to proceed with enforcement action, proposals not to proceed with enforcement action, procedures related to the compilation of environmental impact statements and appeal submissions.

Members will receive weekly list of all applications to advise of those major applications in the system. In addition to the Part 'A' List of delegated local application decisions, there will be a weekly Part 'B' list of delegated decisions on certain major applications, miscellaneous consents, enforcement, TPO's etc. Members will continue to be able to refer any such item to the development management committee.

Details of the scheme of an operational delegation made under the terms of the Local Government (Scotland) Act 1973 are set out in Annex 'C'

E. CONCLUSION

Members of the Council Executive are asked to note the terms of the statutory changes to the way certain planning decisions are to be taken. Additionally, members should note the proposed division to the scheme of delegation, that incorporates the new statutory procedures for the determination of local planning applications.

F. BACKGROUND REFERENCES

Town and Country Planning (Scotland) Act 1997

Planning Etc. (Scotland) Act 2006

Town and Country Planning (Schemes of Delegation and Local Review Procedure)(Scotland) Regulations 2008

Current scheme of delegation

Appendices/Attachments:

Annex 1 the current scheme of delegation

Annex 2 The proposed mandatory scheme of delegation under the Planning Etc (Scotland) Act 2006
(The Part 'A' Scheme)

Annex 3 The proposed operational scheme of delegation under the Local Government (Scotland)
Act 1973 (The Part 'B' Scheme)

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Annex (1)
The current scheme of delegation
(for information purposes only)

Under the current scheme of delegation the Development Control Manager has powers for:-

- (i) the granting of all applications with no objections;
- (ii) the granting of all applications with no "material" (i.e. not related to planning or attracting only 'out of time') objections;
- (iii) the granting of all applications with less than five objections (one objection from a community council or other community group e.g. a residents' association could not be included in this category) unless referred to the committee by the chair/local member. An objection to an application from a statutory consultee would require to be reported to committee. Referral of applications with less than five objections would be at the discretion the development control manager in consultation with the chair and local members;
- (iv) the granting of all applications where a s75 agreement is required, if this in line with council policy (as approved by committee) and agreeable to the applicant;
- (v) the refusal of applications where they are contrary to the development plan or other approved development control policy (regardless of objection); and
- (vi) other development control issues such as certificates of lawful use, prior notifications in line with the above criteria.

Those applications that are required to be referred to development control committee are:-

- (i) the granting of applications that have attracted more than five objections;
- (ii) the granting of an application that has attracted an objection from a community council;
- (iii) the granting of applications made by the council, except where there is an objection;
- (iv) the granting of applications where the council has a financial interest except where there is an objection;
- (v) the granting of applications which are contrary to the development plan; and enforcement notices, tree preservation orders, appeal submissions.

Annex (2)

The scheme of delegation under section 43A of the Town and Country Planning (Scotland Act) 1997, as amended by the Planning Etc. (Scotland) Act 2006

The council's Part 'A' Scheme

The following decisions on planning applications for local developments, as defined in the Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2009, shall be determined by a person appointed by the council for the purposes of section 43A of the principal Act instead of by them:

- (i) the granting of all local applications with no objections;
- (ii) the granting of all local applications with no material planning objections;
- (iii) the granting of all local applications with only 'out of time' objections;
- (iv) the granting of all local applications which are potentially contrary to the development plan with fifteen or less objections;
- (v) the granting of all local applications that are in accordance with the development plan, irrespective of the number of objections;
- (vi) the granting of all local applications that are in accordance with an approved council policy or supplementary planning guidance, irrespective of the number of objections;
- (vii) the determination of all local applications subject to an objection from a statutory consultee in accordance with the terms of Circular 3/2009;
- (viii) the refusal of all local applications that are contrary to the development plan;
- (ix) the refusal of all local applications, irrespective of the number of representations of support;
- (x) the refusal of all local applications that are contrary to an approved council policy or to supplementary planning guidance, irrespective of the number of representations of support; and
- (xi) all applications for consent, agreement or approval required by a condition imposed on a grant of consent for a local development.

The following categories of applications for local developments, as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, shall be determined by the council's development management committee:

- (i) all local applications made by West Lothian Council;
- (ii) all local applications made by a member of West Lothian Council;
- (iii) all local applications which relate to land in the ownership of West Lothian Council;
- (iv) all local applications in which West Lothian Council has a financial interest;
- (v) all local applications that have attracted more than 15 objections that the development management manager is otherwise minded to grant ;
- (vi) all local applications that have attracted an objection from a community council which the development management manager is otherwise minded to grant;
- (vii) any local application at the discretion of the development management manager but in consultation with the chair of the development management committee and all local ward members;
- (viii) any local application so requested by the chair of the development management committee or a local ward member when the application is for land within that local member's ward with the provision that in exceptional circumstances when the impacts of a development impact in planning terms on an adjacent or adjoining ward, any local member of that adjacent or adjoining wards

Annex (3)

The operational scheme of delegation under the Local Government (Scotland) Act 1973

The council's part 'B' Scheme

The following decisions on applications for major developments, as defined in the Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2009, and for miscellaneous consents and other ad hoc powers shall be determined by the development management manager:

- (i) the granting of all major applications which are in accordance with the development plan and which have otherwise attracted five or less objections;
- (ii) the refusal of all major applications that are contrary to the development plan and despite any representations of support;
- (iii) the refusal of all major applications that do not accord with the development plan, other than those applications that constitute significant departures to the development plan;
- (iv) the approval of all applications for listed building consent and conservation area consent, unless there is an objection from a community council or a formally constituted local amenity body;
- (v) the refusal of applications for listed building consent or conservation area consent, irrespective of any representation of support from a community council or formally constituted local amenity body;
- (vi) the determination of applications for express hazardous substances consent;
- (vii) the determination of applications for express advertisement consent;
- (viii) the determination of applications for certificates of lawfulness of proposed development;
- (ix) the issuing of an enforcement notice;
- (x) the issuing of a breach of conditions notice;
- (xi) the issuing of a planning contravention notice;
- (xii) the issuing of an amenity notice;
- (xiii) the issuing of a notice as to the interests in land;
- (xiv) the powers to remove placards etc from land;
- (xv) the issue of a fixed penalty notice;
- (xvi) the issue of a notice requiring the submission of a planning application
- (xvii) the issue of a notice requiring the display of information;
- (xviii) the issuing of a stop notice or temporary stop notice, after consultation with the chair of the development management committee and all local ward members;
- (xix) the designation of a provisional tree preservation order;
- (xx) the confirmation of a tree preservation order;
- (xxi) the authorisation of works to trees in conservation areas or otherwise covered by tree preservation orders;
- (xxii) all applications for consent, discharge or agreement of a condition imposed on a major application; and
- (xxiii) screening opinions and scoping opinions required under the Environmental Impact Assessment (Scotland) Regulations 1999.
- (xxiv) The granting of any approval or prior approval required under the terms of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992

Part 'B' Scheme (continued)

The following applications for major developments, as defined in the Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2009, shall be determined by the development management committee:-

- (i) The determination of all other major applications not specified in (i) to (iii) above; and
- (ii) Any matter in (i) to (xxiv) above so requested by the chair of the development management committee or any local member of the ward in which the case is located , with the provision that in exceptional circumstances when the impacts of a development impact in planning terms on an adjacent or adjoining ward, any local member of that adjacent or adjoining wards