

## Modernising Planning – Scheme of Delegation

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### The City of Edinburgh Council

24 June 2010

#### Purpose of report

- 1 To obtain Council approval to amend the Scheme of Delegation in respect of the functions delegated to the Head of Planning.

#### Main report

- 2 In June 2009 the Council approved adjustments to the Scheme of Delegation to Officers, made under the Local Government (Scotland) Act 1973, in respect of the functions delegated to the Head of Planning. The changes arose from the Planning Etc (Scotland) Act 2006 which aimed to modernise planning, improve the delivery of planning services and make the system more open, transparent and proportionate.
- 3 The amended Scheme of Delegation has been in operation for almost a year; the Head of Planning has reviewed its operation and a number of additions and clarifications are recommended in order that the Scheme better reflects operational requirements.
- 4 The revised section of the Scheme of Delegation is shown in Appendix 1 with the recommended revisions shown in bold type. The changes or additions relate to: -
  - the requirement for environmental assessments;
  - certificates of appropriate alternative development;
  - members requesting referral to the Development Management Sub-Committee;
  - decisions on declining to determine repeat applications;
  - signing processing agreements in respect of major applications as defined in the hierarchy of development;
  - promoting a direction altering the duration of a planning consent; and
  - works on, or enforcement action in relation to, protected trees.

#### Financial Implications

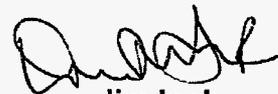
- 5 There are no significant resource implications arising from the changes to the scheme of delegation.

## Environmental Impact

6 This report has no adverse environmental implications.

## Recommendations

7 To amend the Scheme of Delegation to Officers in respect of the Head of Planning as set out in Appendix 1.



Jim Inch  
Director of Corporate Services

14.6.10

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Appendices	1. Scheme of Delegation to Officers – Revised Delegation to Head of Planning
Contact/tel/Email	Henry Scullion 0131 529 4283 <a href="mailto:henry.scullion@edinburgh.gov.uk">henry.scullion@edinburgh.gov.uk</a>
Wards affected	None
Single Outcome Agreement	Supports National Outcome 1: We live in a Scotland that is the most attractive place for doing business in Europe. Supports National Outcome 10: We live in well-designed, sustainable places where we are able to access the amenities and services we need. Supports National Outcome 12: We value and enjoy our built and natural environment and protect it and enhance it for future generations. Supports Local Outcome: Edinburgh is a thriving, growing city with a high quality of life and environment and a prosperous economy. Supports Local Outcome: The development of a quality built and natural environment is supported.
Background Papers	None

**SCHEME OF DELEGATION TO OFFICERS**

**SECTION 4 – DIRECTOR OF CITY DEVELOPMENT**

**SUB-SECTION – DELEGATION TO HEAD OF PLANNING**

**Introductory Note:** The Council has also delegated functions for the determination of local developments to the Head of Planning under section 43A of the Town and Country Planning (Scotland) Act 1997. These functions are listed separately at:

(insert link)

**Head of Planning**

**Planning Policy**

- 4.152 To respond directly to consultations on development plans and planning guidance from neighbouring authorities at any stage in the process unless the Head of Planning considers that:-
- the consultation raises a significant planning issue for the Council which should be drawn to the attention of the consulting authority; or
  - the consultation raises a matter which is potentially controversial or likely to be of significant public interest; or
  - the Council should formally object to a proposed development plan.
- (Note: "a planning issue" may include transport and other infrastructure matters.)
- 4.153 To respond directly to planning related consultations from the Scottish Government and Government Agencies unless the Head of Planning considers that:-
- the consultation raises a significant planning issue for the Council which should be drawn to the attention of the Scottish Government/Government Agency; or
  - the consultation raises a matter which is potentially controversial or likely to be of significant public interest.
- 4.154 **To determine whether a qualifying plan, programme or strategy, which is being prepared or modified, requires environmental assessment in accordance with the Environmental Assessment (Scotland) Act 2005 and to undertake environmental assessment where necessary, including preparing an environmental report and carrying out consultations.**

## Planning Applications etc

**4.155** Subject to the qualifications and exclusions shown below:

- (a) To determine applications (including retrospective applications) for planning permission, listed building consent, conservation area consent, non-material variations, and consent to display an advertisement.
- (b) To determine applications for certificates of lawful use or lawful development under Sections 150 and 151 of the Town and Country Planning (Scotland) Act 1997 **and applications for certificates of appropriate alternative development.**
- (c) To respond directly to consultations on planning applications from neighbouring authorities, specified under the Code of Practice for Planning Application Referrals approved by the Lothian Structure Plan Joint Liaison Committee,

Qualifications to para (a):

- the decision is in accordance with the statutory development plan (Structure Plan and Local Plan);
- the decision is in accordance with non-statutory Council adopted policy, or infringements of policy are so minor that refusal or amendment would be unjustified;
- conditions originally added by Committee are not removed or amended;
- not more than six material objections have been received from third parties;
- not more than six material representations in support of the proposals have been received from third parties.

Qualifications to para (c):

- the application does not raise a significant planning matter, leading to advice to refuse or to object;
- the Head of Planning does not consider the application to be potentially controversial, or likely to be of significant public interest.

Exclusions to paras (a) and (b):

- an application which falls within the definition of national developments as set out in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009;
- an application which falls within the definition of local development as set out in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and is subject to the terms of the scheme of delegation for local developments;

- where a legal agreement is required in connection with the application and the financial value of the matters secured in the agreement is in excess of, or estimated to be in excess of, £250,000; or, where by virtue of any policy or non-statutory guidance on developer contributions there is a requirement to be met and, for whatever reason, that requirement is not being fully met;
- an elected member has requested referral of the application to the Development Management Sub-Committee for material planning reasons, **within 21 days, as set out in the relevant guidance note for elected members;**
- an application submitted by, or on behalf of, the Council (except for the approval of routine minor developments);
- an application submitted by, or on behalf of, an elected member of the authority, or by their partner/close friend/relative;
- an application submitted by, or on behalf of, an officer involved in the statutory planning process, or by their partner/close friend/relative;
- an application for Hazardous Substance Consent;
- the Head of Planning considers that the application is controversial or of significant public interest, or has a significant impact on the environment.

**4.156** Authority to:

- (a) determine whether or not an application for planning permission will need to be accompanied by an Environmental Statement.
- (b) issue an opinion in respect of a Pre-Application Screening request.
- (c) decide whether the method of consultation is acceptable or more is needed in respect of a Proposal of Application Notice.
- (d) decide whether or not to ~~deal with~~ **decline to determine** a repeat application for planning permission **in any of the circumstances set out in Section 39 of the Town and Country Planning (Scotland) Act 1997;**
- (e) **sign a processing agreement in respect of a major application as defined in the hierarchy of development;**
- (f) **promote a direction altering the duration of a planning consent;**
- (g) decide whether or not full details of a proposed agricultural building require to be submitted;
- (h) decide whether or not full details of a proposed forestry building require to be submitted;
- (i) decide whether or not full details of proposed buildings by gas and electricity undertakings, solely for the protection of plant and machinery, are required;
- (j) decide whether or not, in the case of proposed demolition of residential property, to require a formal submission;
- (k) decide whether or not, in the case of proposed toll facilities on toll roads, to require a detailed submission;
- (l) determine painting and sundry minor works requiring permission by reason of an Article 4 Direction;
- (m) determine that alterations to a listed building do not require Listed Building Consent;

- (n) determine whether works or a change of use constitute permitted development;
- (o) determine the display of advertisements

### **Enforcement Action**

**4.157** To be the Proper Officer in terms of the service of enforcement and related notices under section 193 of the Local Government (Scotland) Act 1973.

**4.158** To initiate, progress and conclude enforcement action, interdict action or direct action in connection with:

- Planning Contravention Notices
- Enforcement Notices, including those relating to listed buildings and advertisements
- Advertisement discontinuance procedures
- Reporting to the Procurator Fiscal
- Breach of Condition Notices
- Amenity Notices
- Stop Notices
- Temporary Stop Notices
- Fixed Penalty Notices
- Hazardous Substances Contravention Notices
- Prosecution in respect of any of the above as necessary and the giving of evidence in Court
- Powers of Entry

Provided that any significant cases, or cases where it appears to be in the public interest, shall be reported to the Development Management Sub-Committee for consideration.

**4.159** Notwithstanding the generality of para **4.158** above:

- (a) to withdraw, relax or vary an enforcement notice (Section 129 of the Town and Country Planning (Scotland) Act 1997).
- (b) to undertake work required by an enforcement notice and recover the costs (Section 135 of the Town and Country Planning (Scotland) Act 1997).
- (c) to serve a notice in a case of non-compliance with planning consent (Section 145 of the Town and Country Planning (Scotland) Act 1997).
- (d) to lodge an interdict restraining a breach of planning control to the Court of Session/Sheriff (Section 146 of the Town and Country Planning (Scotland) Act 1997).
- (e) to undertake work required by non-compliance with a listed building enforcement notice (Town and Country Planning (Scotland) Act 1997 and Section 38 of the Town and Country Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997).
- (f) to serve Section 270 Notices and Planning Contravention Notices.

- (g) to determine whether or not it is expedient to take no further action in respect of a breach of control having regard to the provisions of the development plan and other material planning considerations.
- (h) after the service of a notice, to take all necessary subsequent steps to bring the matter to an acceptable conclusion.
- (i) to institute any necessary action to remove or obliterate placards or posters which are displayed in contravention of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 and the Town and Country Planning (Scotland) Act 1997 (as amended).
- (k) to undertake and enforce the procedures requiring developers to inform the Council of the initiation and completion of developments and in relation to the display of notices indicating the development being carried out.
- (l) to issue and enforce a notice requiring the owner of land, where planning permission has not been granted but development has been carried out, to make an application for planning permission.

Provided that any significant cases, or cases where it appears to be in the public interest, shall be reported to the Development Management Sub-Committee for consideration.

#### **Landscape**

- 4.160 To make provisional Tree Preservation Orders (the Planning Committee approves the final order taking into account objections or representations received).
- 4.161 To authorise felling, pruning, topping, lopping of trees **or the carrying out of other prohibited works to trees** protected by Tree Preservation Orders (including the imposition of replanting conditions as appropriate).
- 4.162 To authorise felling, pruning, topping, lopping of trees **or the carrying out of other prohibited works to trees** in conservation areas
- 4.163 **To serve, progress and conclude action in respect of Tree Replacement Notices, including any necessary follow-up direct action.**
- 4.164 **To investigate unauthorised works to protected trees and to report offences to the Procurator Fiscal where considered appropriate.**

#### **Appeals**

- 4.165 To determine what response should be made to the Directorate of Planning and Environmental Appeals in the case of appeals submitted in respect of the non-determination of an application and where the application could otherwise have been dealt with under delegated powers.

#### **Legal agreements**

- 4.166** To enter into a legal agreement with a developer, provided that:
- the agreement complies with the terms of Government guidance, relevant development plan policies and supplementary guidance on developer contributions; and
  - does not involve a financial sum or other contributions of a value exceeding £250,000.

#### **Miscellaneous**

- 4.167** To authorise Powers of Entry to land for any purpose (especially surveying) relating to the preparation of a development plan and general planning controls (Sections 269 & 270 of the Town and Country Planning (Scotland) Act 1997).
- 4.168** To allocate new street numbers and, in consultation with the appropriate local ward councillors, to change street numbers and to name new streets.
- 4.169** To require proper maintenance of land affecting listed buildings or conservation areas and to undertake necessary work and recover costs in cases of non-compliance (Sections 135 and 179 of the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997).