



NORTHAMPTON
BOROUGH COUNCIL

COUNCIL

Directorate:

People, Planning and Regeneration

Corporate Manager:

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Date: 26 March 2007

Report Title

Amendments to Part 8 of the Council Constitution –
Delegations to Officers – Planning (Development Control)

1. Recommendations

A. That Part 8 of the Council Constitution be amended in respect of the Scheme of Delegation, to an “exceptions-based” approach to delegated Development Control decisions, as set out in this Report, and that such amendments be formulated and submitted to a future meeting.

B. That the arrangements as detailed in this report be followed in relation to consultations on planning applications submitted to West Northamptonshire Development Corporation

C. That an amendment be made to the Scheme of Delegation as contained in the Borough Council Constitution to include the words under delegated authority to the Corporate Manager (Regeneration, Growth and Community Development)..

“Responses to the West Northamptonshire Development Corporation on planning applications for which they are the determining authority where this would not prejudice the policies and provisions of the Development Plan or have other strategic consequences, including its impact on or prejudice to the Councils strategic or corporate priorities”.

D. That Planning policy and conservation write an explanatory note on the provisions for community consultation in light of WNDC receiving and processing applications directly, and the Borough Council’s approach to responses by 1 June 2007 to accompany the Councils adopted Statement of Community Involvement.

2. Report Background

2.1 The Service Inspection Report into Planning Services, undertaken in September 2006, set out the Audit Commission's concern, amongst other things, regarding the quality of the Development Control decision-making process. In particular, the Report makes the following statements:

"The planning committee is not fully effective. For example, the quality of planning committee debate is variable. Some members of the public have expressed a low level of confidence in the impartiality of committee debate...." (paragraph 49)

"The planning committee and the development control decision-making process are inefficient, and this contributes to poor value for money. There remains a relatively low level of planning decision delegation to officers (BVPI 188; 85 percent in 2005/06, un-audited). Higher levels of delegation would lead to greater efficiency. For example, over 240 applications are taken to committee every year (2004/05 and 2005/06) and these require considerable officer time in preparing and presenting applications for committee. Furthermore, the delegation scheme allows applications to be called into committee in the absence of firm planning reasons, and so too many applications are considered at committee with little value being derived....." (paragraph 92)

"Councillors too readily engage in detailed planning matters on individual planning applications...."(paragraph 93)

2.2 The purpose of Recommendation A of this Report is to address some of these criticisms by means of a proposed revision to the Scheme of Delegation as set out in Part 8 of the Council Constitution.

2.3 Furthermore, the Council Constitution must now also take account of the role of West Northamptonshire Development Corporation (WNDC) in planning matters.

Scheme of Delegation

2.4 Delegation of routine planning applications to officers has been consistently recommended in official and professional good practice advice as a means of making the development control system more efficient. It also allows the Committee to focus its attentions on significant and/or controversial cases. Last year (2005-06), the Council determined 84% of planning applications through delegated authority. Currently, on the basis of data for the first three quarters of 2006-07, this figure has improved, with around 93% of determinations being taken under delegated powers. However, this figure should be considered to be "fragile," on the basis of historical trends.

2.5 In 2003-04, a national Best Value Performance Indicator suggested a minimum of 90% of decisions should be taken under delegated powers. The proportion of decisions dealt with under delegated powers is not, however, a figure entirely

under the Council's control. It is the result of a particular scheme, the nature of applications received and the response of (inter alia) consultees. There is not necessarily a "straight-line" correlation between delegation levels and the much more relevant issue of speed of determination, although it is reasonable to suppose that there might be. Therefore, delegated decisions may be reached more quickly than those referred to Committee. However, they also involve less time, trouble and administrative input and, therefore, reduce costs.

2.6 In March 2004, the Local Government Association and the (then) Office of the Deputy Prime Minister jointly published a good practice guide for schemes of delegation: *Delivering Delegation*. They did not advocate a model scheme: demonstration of local discretion, probity, transparency, fairness and consistency are seen as paramount considerations. However, a "by exceptions" approach is clearly advocated: i.e., instead of trying to specify which applications can be handled under delegated powers, the approach should be that all applications are handled this way unless they are specified exceptions. This allows the scheme to be much simpler than would otherwise be the case.

2.7 *Delivering Delegation* states:

"Delegation has benefits for all stakeholders in terms of simplifying procedures, minimising costs and freeing up Committee members to concentrate on major or controversial cases, Where there is no need to await a Committee decision, up to four weeks can be saved in dealing with a planning application. Delegation is a positive process that gives benefits, not just in terms of streamlining internal procedures, but also in terms of improved responsiveness for applicants."

2.8 *Delivering Delegation* defines the advantages of effective delegation as being:

- Simplified procedures and a speeded-up process
- Minimised costs and improved service delivery within budgetary limits
- Realised officer resources to focus on other equally important areas of work, to achieve service improvement
- Reduced length of Committee meetings and improved Committee practice
- Removal of applications which elicit no Member discussion and evaluation at Committee
- Clarification of the current system and protection of Member involvement
- Increased officer performance and quality
- Best practice recognition

2.9 It is stressed that delegation is **not**:

- A process designed to transfer power from elected Members to officers
- A method or means to dilute the transparency of the Development Control process

2.10 This Council's approach to delegation in determining planning applications is not based upon an exceptions approach and, as is currently set out, places a heavy burden upon both officers and Members.

2.11 It is important to bear in mind that Planning Committee also has to consider a significant number of consultations by WNDC. This matter is dealt with in more detail below. Notwithstanding this, as the pace and scale of development increases, the number and complexity of such consultations is likely to increase accordingly. It is therefore crucial that an effective Scheme of Delegation is in place to ensure that Members have the required time at Committee to consider those applications that are of real significance. Furthermore, considerable time is taken by the Council's officers in preparing reports of WNDC consultations for Planning Committee. Notwithstanding the proposals below in respect of delegations for WNDC consultations, this task is likely to increase rather than decrease. It will therefore impact of officers' time. An effective Scheme of Delegation is therefore essential to ensure the best use of both Members' and officers' time.

2.12 The current Scheme of Delegation is unusually detailed and complicated. It is not an "exceptions-based" scheme as recommended by Government. Furthermore, it is also out of date in respect of the current Use Classes Order (e.g. 2.1.6 refers to the former Use Class A3 – Food and Drink). It is preferable, for reasons outlined above, to move to an exceptions-based Scheme of Delegation. This would also have the added advantage of not requiring to be brought constantly up to date when changes are made to the Use Classes Order itself.

2.13 It is therefore proposed that such a Scheme of Delegation should delegate the determination of all planning applications to the Corporate Manager (or whom she should see fit to delegate to below her level), except the following categories:

- Applications called in by any Member of the Council, following a written request
- Referrals to the Planning Committee by the Corporate Manager or Development Control Manager
- "Probity and propriety" cases: applications by current or former (within 5 years) Members or officers of the Council
- Applications for the development of land owned or under the control of the Borough Council.

These exceptions are analysed in some detail below.

2.14 *Member “call-in”*. This is a usual but not universal element of delegation schemes and one which is fully supported by Government. In some authorities, the call-in right is restricted, for example to Members of the Planning Committee; or more than one Member has to sign up to the call-in. Such restrictions are considered inappropriate, especially given the Government’s emphasis on the fact that every Member’s primary duty is to act in the interests of the Borough as a whole.

2.15 The ability of any Member to call an application to Committee is a necessary safeguard for any Scheme of Delegation which Members can accept and trust; it is a critical component of accountability. It is usual for the right to be time limited and it is proposed that it be within 21 days of the date of the circulation of weekly list. Furthermore, it must be in writing, with reasons that are based on material reasons.

2.16 The reasons for Members to want an application to be considered by Committee have to be “reasonable”, but do not necessarily need to be limited to strictly “planning” grounds. For example, a Member may want an application to be called-in because it is locally controversial. Reasons for call-in must be required and these must be reported to the Committee, so that it is clear why a Member wants an application to be so determined. A Member should also be able to decide whether they wish an application to be considered by Committee within 21 days of being notified of its existence. A longer, possibly indeterminate period, makes management of the development control process very difficult. Furthermore, the Member must be able to rescind their request for call-in if their concerns are satisfied as the application progresses through the development control process.

2.17 *Referral by the Corporate Manager/Development Control Manager*: this is a normal element of such schemes, providing simply that the Corporate Manager/Development Control Manager can refer any application to the Committee. The Scheme should incorporate such a provision. However, it must be made explicit that the reasons for referral by the senior officer relate to significant planning issues involved in consideration of a particular application. These issues might include (*inter alia*) the scale of a proposal; the difficulty of balancing material considerations; or departures from policy. They would not include controversy as such: reference to Committee because an application is controversial should be adequately and more properly covered by other elements of the scheme – i.e. the right for Member call-in.

2.18 *Probity exceptions*: This type of exception is common in most Schemes. It is normal to ensure that:

- Significant applications made by or on behalf of the Council are handled by the Committee
- Applications on land which is owned by the Authority are dealt with by the Committee

- Applications by or on behalf of current or recent (5 years) Council Members are dealt with by Committee
- Applications by current or former (5 years) members are staff are referred to Committee.

West Northamptonshire Development Corporation (WNDC)

2.19 Since April 2006, West Northamptonshire Development Corporation (WNDC) have had planning powers to determine all planning applications in Northampton Borough which are of strategic significance and also the majority of applications within the Central Area of Northampton. Since January 2007 WNDC have been carrying out the registration and assessment of planning applications themselves and have appointed a team of development control staff.

2.20 Arrangements need to be agreed under which WNDC will consult this Council on planning applications and the means by which the Council will formulate responses.

Scope of Consultation with the Borough Council

It is proposed that WNDC should be asked to consult this Council on all applications submitted within the Borough of Northampton ,

This will enable the Council to maintain a comprehensive planning application database to ensure an accurate record of planning proposals and ensure that planning officers are fully aware of all applications and decisions in order to help make consistent and complimentary decisions. In terms of minor applications it is quite likely that the Council will not wish to make any comment but it is considered important that we are informed of all applications made.

For the purposes of the Land Charges service it is important that a comprehensive understanding of development proposals is maintained.

For the purposes of the Councils planning enforcement service it is equally important that we have a record by way of consultation of all developments, and therefore maintain comprehensive planning history in order to effectively take enforcement action. It would be inappropriate to rely on a third party's record management system when legal proceedings may require officers to swear in Court as to their validity.

WNDC have been asked to address each planning application consultation to the Director of People, Performance and Planning who will ensure that a corporate response is provided.

Proposed arrangements to provide responses to WNDC

2.21 Like other consultees, the Borough Council will normally have 21 days to make comment on a planning application in order that the planning authority can

consider responses and make prompt decisions. .

- 2.22** It will be necessary to seek delegated authority for officers to respond on behalf of the Council for certain types of application in order to ensure that the Council's views can be made in time. There is at present no reference in the Council Scheme of Delegation for officers being given authority to provide responses to WNDP and this will need amending urgently. In the Scheme of Delegation issued in November 2006, delegation is provided to the Corporate Manager (Development, Building Control and Environmental Health) to make responses both to neighbouring authorities on fringe applications and to the County Council on its own planning applications "which would not prejudice the policies and proposals of the Northampton Local Plan or have any other strategic consequences".
- 2.23** It is proposed that this statement should also form the basis of delegated authority to the Corporate Manager (Regeneration, Growth and Community Development) for making responses to WNDP. As such the test of whether WNDP planning applications are brought to Planning Committee will be if they are considered to be either of strategic significance or may prejudice the policies and proposals of the development plan. This remains at present in largely the Northampton Local Plan, but in time will be superseded by its successor documents through the Regional Plan and Local Development Framework.
- 2.24** The definition of "strategic" would be the threshold of strategic applications considered by WNDP and therefore only smaller town centre proposals would fall to officers to make comment. For additional flexibility it is suggested that words to enable officers to bring to the Committee any application, which is considered to impact upon or be prejudicial to the Council's strategic or corporate priorities, should be added to the scheme of delegation. This clause will enable officers to exercise discretion and respond to member and community views on applications, without the need for a right of "call in". Public speaking on the consultations will be permitted and this will enable community views to be made, although the public will increasingly be also aware of their ability to speak at the WNDP Committee directly. The decision on delegation or committee routes will rest with the Corporate Manager (Regeneration Growth and Community Development) or his/her representative in consultation with the portfolio holder.
- 2.25** WNDP consultations will be dealt with by a nominated officer within regeneration and growth that will carry out rapid internal consultation as needed within the Council. This will focus not only on the Council's responsibilities for forward planning, housing, conservation and regeneration but also wider corporate responsibilities e.g related to community leadership. There will be a core team of officers who will normally expect to be consulted internally but this will be expanded as necessary. Ward members will also be consulted by e mail at this time and invited to forward views. No further consultations will be carried out since it is for WNDP themselves as the development control authority to consult directly with the community.

2.26 The officer will then prepare a response and either forward it directly following necessary approvals under delegated authority as suggested or include it in a report to Planning Committee. For ease of administration, all recommended WNDC responses for Committee approval will be included in a single report.

3. Resource Implications (including Financial Implications)

The intention behind the proposed revisions to the Scheme of Delegation in respect of applications for which the Borough Council is the determining authority, is to ensure that Members consider the “right” applications, including those with significant public interest. The current delegation rate (89%) is below the Government target of 90% and is also a “fragile” statistic, based on historical data.

The proposed revisions do not guarantee that the length of the Committee agenda will reduce, but it does provide for Members’ attention to be focused on those applications which are truly significant and meritorious of Committee consideration.

It is also difficult to quantify the staff time which will be required to compile responses to WNDC consultations. To date development control staff have considered in detail major strategic applications and been informed by a number of relevant officers via internal consultations. Until January 2007 they also administered applications for the WNDC and received the corresponding fee income.

The need to consult widely internally and produce reports for committee will not significantly reduce the level of resource needed as a consultee. However, the reduction in income from the WNDC in respect of processing applications is significant. As applications are no longer being administered by development control on behalf of the WNDC, it is appropriate for the co-ordination of consultations to be undertaken through the regeneration and growth team rather than development control. This is because of the contribution these applications will make to achieving the Council’s strategic and corporate priorities for the regeneration of the town.

4. Consultees (Internal and External)

Internal	Development Control, Planning Policy, Legal, Finance.
External	None

5. Compliance Issues

A: How Proposals Deliver Priority Outcomes

Recovery Plan
In reaching the attached recommendations regard has been given to securing the objectives and priorities set out in the Recovery Plan and the Planning Service Improvement Programme.
Corporate Plan
In reaching the attached recommendations regard has been given to securing the objectives, visions and priorities outlined in the Corporate Plan together with those of associated Frameworks and Strategies.

B: Other Implications

Other Strategies
None


Finance Comments
None

Legal Comments
These have been incorporated within the report.

9. Background Papers

Title	Description	Source
None		

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