

WEST DUNBARTONSHIRE COUNCIL

Report by Executive Director of Housing, Environmental and Economic Development

Planning Committee: 2 June 2009

Subject: Scheme of Delegation and Remit of Planning Committee

1. Purpose

- 1.1** To seek approval of a revised scheme of delegation, which is to be submitted for approval to the Scottish Government.

2. Background

- 2.1** The Local Government (Scotland) Act 1973 empowers local authorities to delegate a wide range of decisions to officers, including powers to determine certain planning applications. Whilst it was previously left to each local authority to decide the nature and extent of their own delegation arrangements, the Planning etc. (Scotland) Act 2006 has now introduced a positive requirement that each planning authority must prepare a scheme of delegation under which determination of certain specified types of planning application is delegated to officers. Furthermore, the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 require that this scheme of delegation must be submitted to the Scottish Ministers for approval, and must be reviewed at least every five years. A new scheme of delegation requires to be submitted to the Scottish Ministers for approval before the end of June 2009.

- 2.2** The 2006 Act has introduced a new hierarchy of developments, whereby each application is categorised as either 'national', 'major' or 'local' development. This hierarchy, which was presented to the Planning Committee of 7 April 2009, is explained in Appendix A to this report, but in general national developments are those raising issues of national importance, major developments include those for 50 or more dwellings, some waste and energy infrastructure and major retail, commercial and industrial developments, and local developments include all other proposals.

- 2.3** The present scheme of delegation of the Council under which applications are currently determined was approved in November 2007. The existing scheme of delegation gives officers delegated powers to determine all applications except those:

- where approval would involve a decision which is a significant departure from local or national policy or from the emerging development plan;

- where approval is recommended and there is a substantial body of objection;
- where approval is recommended despite the strong recommendation of a statutory consultee;
- where the Executive Director considers that the application raises new or significant issues which require to be determined by the Planning Committee.

These provisions do not fully comply with the requirements of the 2006 Act or the 2008 Regulations, and therefore a revised scheme must be agreed.

- 2.4** The 2006 Act also revised the appeal procedures, such that most appeals against delegated decisions relating to local developments will no longer be determined by the Scottish Ministers. Instead, such appeals will be subject to consideration by a Local Review Body. The proposed review procedures are addressed within a separate report on this agenda. It should be noted that the wider the delegated powers are at this stage, the greater will be the number of reviews determined by the Council and the fewer the number of appeals determined by the Scottish Ministers in Edinburgh.

3. Main Issues

- 3.1** Whilst it remains largely for each individual planning authority to determine the criteria for delegation to officers, the new regulations do include a number of specific requirements. Authority to determine applications for planning permission for or relating to local development is normally to be delegated to an officer determined by the authority rather than by the Planning Committee. Important exceptions are where the application has been made by the planning authority or by a Member of the planning authority, or where the planning authority has an ownership or financial interest in the land. The planning authority may also decide to place such other restrictions as it thinks fit on the scheme of delegation (although this will be subject to approval of the scheme of delegation by the Scottish Ministers). Additionally, the planning authority may decide to determine any application which would otherwise have fallen within the scheme of delegation, although a statement of the reasons for doing so must be provided to the applicant.
- 3.2** The current scheme of delegation allows officers to deal with straightforward planning applications whilst allowing elected members to focus attention on more complex or controversial applications. This is very much in keeping with the Scottish Government's advice, which encourages Planning Committees to focus on the larger and more important development proposals and to avoid the delays and additional work which may arise if minor development is referred to the Committee. It also allows the Council to maintain one of the highest levels of performance in Scotland. It is recommended that a similar approach is adopted within the new scheme of delegation together with the requirements imposed by the 2008 Regulations. A proposed scheme of delegation is contained within Appendix B to this report. It has been forwarded informally to

the Scottish Government and any response will be made known verbally to the Committee.

- 3.3** The current scheme of delegation authorises the Executive Director to act on behalf of the Council and authorise staff to undertake functions. In relation to planning applications and related matters this authorisation extends to the Section Head Development Management. The 2006 Act makes reference to delegation to an 'appointed officer' and it is recommended that this officer should be the Section Head Development Management or her/his nominee. It is important to specify this as so doing allows the Planning Services Manager to remain independent of the delegated process and thereby be available to advise the Local Review Body (see accompanying report on this agenda on this topic).
- 3.4** The legislation also prescribes certain classes of development that will be the subject of a mandatory pre-determination hearing by the Planning Committee. Pre-determination hearings will be mandatory in respect of major developments which are significantly contrary to the development plan and in respect of national developments. The 2006 Act introduces a new requirement in the interests of transparency that following consideration by the Planning Committee these classes of development will require to be determined by the full Council. Such referral to Council will be relatively rare but it is important that Council procedures are amended to make provision for such cases. These will be reported to the Planning Committee which will deal with pre-determination hearings and report its recommendation to Council. As Standing Orders were amended in February 2009 consideration of these changes will require suspension of Standing Orders when this matter is considered by Council.
- 3.5** The 2006 Planning Act also allows the planning authority to hold a hearing for any development not covered by the mandatory requirements and to give the applicant and other persons an opportunity of appearing before and being heard by the Planning Committee, as currently happens in this Council. Examples given include where the local authority has a financial interest or applications that have attracted a given number and type of objections or applications relating to development in sensitive areas protected by statutory designations. There are no legislative requirements to refer such cases to Council and the Planning Committee's decision on these will continue to be final (subject to normal appeal). Appendices C and D of this report indicate when a planning hearing and site visit will take place and the planning hearing procedure. They also advise on the type of applications which require to be determined by full Council.

4. Personnel Issues

- 4.1** The new requirements may result in a small increase in number of applications being presented to Committee which will result in an increase in the workload of Planning, Legal and Administration Staff.

5. Financial Implication

5.1 There are no direct financial implications to the Council.

6. Risk Analysis

6.1 It is important that a revised scheme of delegation is agreed and submitted to the Scottish Ministers to allow the determination of local development from the commencement date of 3 August 2009. Failure to do so would result in procedural and operational chaos and likely legal challenge.

7. Conclusion & Officers' Recommendations

7.1 Delegation to officers is an important means of adding efficiency to administrative procedures and the Scottish Government wants to encourage an appropriate level of delegation to officers to support a modernised planning system. The 2006 Planning Act requires planning authorities to prepare a new Scheme of Delegation which is to be submitted for approval by the end of June 2009. To this end a new Scheme of Delegation has been prepared which meets the provisions of the 2008 Regulations and allows the appointed officer to determine certain categories of development. The Scheme of Delegation proposed in Appendix B allows powers to be delegated to officers on straightforward planning applications allowing elected members to focus attention on more complex or controversial applications.

7.2 It is recommended that the Planning Committee agree to remit to Council the following:

- (a) to agree to the suspension of Standing Orders to allow consideration of the changes required by recent planning legislation;
- (b) to agree the Scheme of Delegation outlined in Appendix B which is then to be submitted to the Scottish Ministers for approval by the end of June 2009 and to come into operation, as may be amended, on 3 August 2009;
- (c) to agree that Appendix 3(h) of the Standing Orders is amended to provide that the Planning Committee does not have powers to determine applications which are national developments or major developments which are significantly contrary to the development plan and to make clear that the Planning Committee should consider such applications and make recommendations to Council.

- 7.3 It is recommended that the Planning Committee confirms the hearings procedure detailed in Appendices C and D.

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Appendices: A, B, C and D

Background Papers: The Planning Act 2006
Town & Country Planning (Scheme of Delegation & Local Review Procedure) (Scotland) Regulations 2008.
Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009

Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2008.

Wards Affected: All.

APPENDIX A

Major Development as Specified by the Town and Country Planning (Hierarchy of Development)(Scotland) Regulations 2009

- Schedule 1 development as specified in the Environmental Impact Assessment (Scotland) Regulations 1999.
- Housing development 50 or more units or the area of the site exceeds 2 hectares.
- Business, general industry, storage and distribution exceeding 10,000 square metres or the area of the site exceeds 2 hectares.
- Electricity Generation Station the capacity exceeds 20 megawatts.
- Facilities for the use of waste management or disposal capacity is or exceeds 25,000 tonnes per annum.
- Construction of new or replacement roads, railways, tramways, waterways, pipelines and aqueducts the length of infrastructure exceeds 8 kilometres.
- Fish Farming surface area of water covered is or exceeds 2 hectares.
- Extraction of Minerals area of the site is or exceeds 2 hectares.
- Any development not falling wholly within a single class of development described above. gross floorspace of the structure or building is or exceeds 5,000 square metres or area of the site is or exceeds 2 hectares

APPENDIX B

DRAFT SCHEME OF DELEGATION

1. **APPOINTED OFFICER:** The Section Head of Development Management or, in his/her absence, the Team Leader or a Planning Officer in the Development Management Section shall act as the 'appointed officer' to determine the following applications, subject to the exceptions of paragraph 2 hereof:
 - (a) all applications for permission in respect of development within the category of local development, changes of use and listed building applications, conservation area consents, advertisement applications, hazardous substances applications, Tree Preservation Order applications and the making of provisional TPOs, prior approval and notification applications, certificates of existing/proposed Lawful use or development, Stopping up orders, screening and scoping opinions for Environmental Impact Assessment or pre-application consultation and enforcement actions;
 - (b) all applications to comply with the terms of a condition imposed on a consent for any development; and
 - (c) all applications for non-material variations to planning permissions and related consents (including where the original application was subject to one or more of the exceptions outlined in paragraphs 2).

2. **EXCEPTIONS:** Delegated Powers shall not apply where:
 - (a) the application has been made by or on behalf of West Dunbartonshire Council (the planning authority);
 - (b) the application has been made by or on behalf of an elected member of the Council, a member of the Senior Management Team of the Council, or a member of staff directly involved with the Council's Planning Service;
 - (c) the application relates to land in the ownership of the Council, or in respect of which the Council has a financial interest;
 - (d) the application relates to development within the categories of national or major development;
 - (e) the application is for local development which would be a significant departure from the statutory development plan, from other national or local policy, or from the emerging development plan;
 - (f) the application is subject to a substantial body of objection where the appointed officer is minded to grant permission;

- (g) the application has been the subject of a formal objection by a statutory consultee, from a Community Council, from a neighbouring planning authority, or from another Council Service; or
- (h) the application, in the opinion of the appointed officer, raises new or significant issues meriting determination at Planning Committee.

Proviso:

Under section 43A of the 2006 Planning Act if it is decided that an application which would otherwise fall to be determined under delegated powers be determined by Committee the applicant shall be provided with a statement giving reasons for why the application is to be determined by Committee.

Footnote: 1.National, major or local development are categorised as development belonging to the categories described in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

3. Procedure following Determination

Following refusal of an application or if the applicant wishes to contest a condition attached to the grant of permission or following non-determination of an application within the prescribed period, the following route should be followed:

- **Local Review Body** – Local development determined under delegated authority including conditions imposed on a grant of planning permission, non determination of applications within the 2 month period which would have been dealt with under delegated authority according to the approved scheme of delegation.
- **Appeal to the Scottish Ministers** – National and Major Developments, Local development determined by Planning Committee, Listed Building Consents, Conservation Area Consents, Hazardous Substances Consents and Advertisement Consents, non determination of applications which according to the approved scheme of delegation would have been dealt with by Planning Committee.

APPENDIX C

1. Hearing Procedures

1.1 Pre-determination hearings will be available to both the applicant and the objectors for the following applications presented to Planning Committee:

- Major developments where they are significantly contrary to the development plan and national developments
- Applications which are subject to representation

If the applicant or objector/supporter wishes to be heard by the Planning Committee they should inform the Councils Administration Section at least 7 days before the date of the Planning Committee.

2. Site Visits

2.1 A site visit will take place prior to the date of the Planning Committee. It will be attended by officers of the Council and elected members and it is an opportunity for elected members to be acquainted with the site. Site visits will take place for all applications which are subject to representation, major development which is a significant departure from national or local policy or the emerging development plan or any such application that officers or elected members, so require. The applicant will be advised if a site visit will take place.

3. Planning Hearing Procedure

3.1 The planning hearing will be conducted as per the hearing procedure detailed in Appendix D. It will be circulated prior to the Planning Committee and will be available at the Planning Committee meeting.

4. Referral of Applications to Full Council for decision

4.1 This requirement relates to major developments which are significant departures from the development plan or national developments which have been first considered by the Planning Committee. A pre-determination hearing will take place at the Planning Committee only.

APPENDIX D

PLANNING HEARING – PROCEDURE

BEFORE THE HEARING BEGINS THE PLANNING SERVICES MANAGER OR REPRESENTATIVE WILL ASK IF THE HEARING PROCEDURE IS UNDERSTOOD BY THE PARTICIPANTS.

HEARING BEGINS

1. THE CHAIR OF THE COMMITTEE WILL INTRODUCE THE AGENDA ITEM. THE PLANNING SERVICES MANAGER OR REPRESENTATIVE WILL GIVE DETAILS OF THE APPLICATION.
2. THE OBJECTORS AND/OR THEIR AGENTS AND ANY WITNESS WILL BE ASKED TO COME FORWARD AND PRESENT THEIR OBJECTIONS TO COMMITTEE IN SUPPORT OF THEIR WRITTEN OBJECTION(S), IN THE ORDER DETERMINED BY THE CHAIR OF THE COMMITTEE. EACH OBJECTOR WILL NORMALLY BE GIVEN 10 MINUTES OR SUCH OTHER PERIOD AS THE COMMITTEE MAY AGREE. IN CASES WHERE THERE ARE SEVERAL OBJECTORS, THE CHAIR WILL ASK IF THERE IS A SPOKESPERSON FOR ALL INTERESTS.
3. MEMBERS OF THE COMMITTEE MAY ASK QUESTIONS OF OBJECTOR(S) AND/OR THEIR AGENTS AND ANY WITNESS.

Objectors will then return to the public gallery.

4. THE APPLICANT AND/OR THEIR AGENTS AND ANY WITNESS WILL PRESENT THEIR CASE AND WILL SPEAK FOR A MAXIMUM OF 5 MINUTES OR SUCH OTHER PERIOD AS THE COMMITTEE MAY AGREE.
5. MEMBERS OF THE COMMITTEE MAY ASK QUESTIONS OF THE APPLICANT(S) AND/OR THEIR AGENTS AND ANY WITNESS.

Applicant and agent(s) will then return to the public gallery.

HEARING CLOSES

6. AT THIS STAGE THE PLANNING SERVICES MANAGER OR REPRESENTATIVE WILL ADDRESS THE COMMITTEE AND GIVE APPROPRIATE CLARIFICATION ON ANY ISSUES RAISED DURING THE HEARING.
7. MEMBERS OF THE COMMITTEE WILL BE GIVEN THE OPPORTUNITY TO ASK QUESTIONS/SEEK CLARIFICATION OF ANY PLANNING ISSUES.

COMMITTEE DECISION

8. COMMITTEE DISCUSSIONS, MOTIONS AND DECISION.
9. THE CHAIR OF THE COMMITTEE WILL REPORT THE DECISION OF THE COMMITTEE TO THOSE PRESENT AND IF NECESSARY CONFIRMING THE REASONS FOR THAT DECISION.

NOTES

- (1) YOU WILL ONLY BE ABLE TO ADDRESS THE COMMITTEE IF YOU MAKE WRITTEN REPRESENTATIONS ON THE PLANNING APPLICATION (EITHER OBJECTING OR IN SUPPORT) AND RESPONDED TO THE RECENT LETTER FROM THE COUNCIL'S ADMINISTRATION SECTION. IF YOU WISH TO SPEAK AT THE HEARING PLEASE MAKE SURE YOUR NAME IS RECORDED BY THE ADMINISTRATIVE OFFICER PRESENT OR YOU WILL NOT BE ALLOWED TO SPEAK.
- (2) WHEN YOU ARE CALLED TO SPEAK, PLEASE MOVE FORWARD TO THE COMMITTEE TABLE; IF YOU ARE AN OBJECTOR, UNLESS OTHERWISE ADVISED, AFTER YOU HAVE SPOKEN AND ANSWERED ANY QUESTIONS PLEASE RETURN TO YOUR SEAT IN THE PUBLIC GALLERY.
- (3) PLEASE PRESENT YOUR POINTS WITHIN THE AGREED TIME LIMITS, WHICH ARE TO ENSURE ALL PARTIES INVOLVED ARE GIVEN AN OPPORTUNITY TO PRESENT THEIR CASE.
- (4) ALL REPRESENTATIONS RECEIVED IN RELATION TO AN APPLICATION ARE SUMMARISED IN THE COMMITTEE REPORT. NO NEW ISSUES CAN BE INTRODUCED DURING THE PLANNING HEARING IF THEY HAVE NOT BEEN PREVIOUSLY STATED IN YOUR LETTER(S) OF OBJECTION.
- (5) IN YOUR ADDRESS, PLEASE AVOID REPEATING POINTS MADE IN EARLIER SUBMISSIONS. YOU CAN INDICATE SUPPORT FOR EARLIER COMMENTS AND CONCENTRATE ON ANY NEW POINTS.
- (6) WHERE THERE ARE SEVERAL OBJECTORS A SPOKESPERSON CAN BE APPOINTED.
- (7) THE CHAIR WILL DIRECT THE HEARING PROCESS IN ACCORDANCE WITH THE HEARING PROCEDURE NOTE (OVERLEAF).