

## ABERDEEN CITY COUNCIL

---

COMMITTEE: Full Council

DATE : 26<sup>th</sup> June 2013

DIRECTOR: Gordon McIntosh

TITLE OF REPORT : Proposed Amendments to Approved Scheme of Delegation relating to Planning Applications for Local Developments

---

### 1. PURPOSE OF REPORT

The purpose of this report is to identify and seek Member approval for amendments to the existing Scheme of Delegation prepared in terms of the Planning Etc (Scotland) Act 2006 and the Town and Country Planning (Scotland) Act 1997 that is presently operated in relation to planning applications.

The existing Scheme of Delegation has worked well and has allowed elected Members to concentrate on strategic matters. It is, however, considered appropriate that the Scheme be reviewed in the light of experience, to take account of amended legislation and to provide an opportunity for further efficiencies to be gained in the determination of planning applications that are defined as local developments.

### 2. RECOMMENDATION(S)

It is recommended that:

1. the terms of the revised Scheme of Delegation as set out in the report be agreed and that the powers identified therein be delegated to the appointed officer.
2. it be remitted to the Head of Planning and Sustainable Development to forward the revised Scheme of Delegation to the Scottish Ministers for their consideration and approval, as required under the regulations.
3. should the Scheme not be approved by Ministers, it is remitted to the Head of Planning and Sustainable Development, in consultation with the Convener of the Development Management Sub-Committee to agree changes to the Scheme in line with the views expressed by Scottish Ministers and to report further to the Committee thereon in due course.

### 3. FINANCIAL IMPLICATIONS

There are no financial implications for the Council arising directly from the content of this report. Approval of the report will, however, allow potential savings by reducing the time taken to determine planning and other related applications. Members may care to note that a new fees structure for planning applications came into place in March 2013 and the Scottish Ministers are proposing a penalty clause and reversion to the former fee levels for Councils that cannot demonstrate a sustained improvement in performance, including the speed at which applications are determined.

### 4. OTHER IMPLICATIONS

Potential improvements to customer service will be achieved as a result of quicker decision making. There are no legal, resource, personnel, property, equipment, sustainability and environmental, health and safety and/or policy implications resulting from this report.

### 5. BACKGROUND/MAIN ISSUES

#### Background

The Council presently operates two separate, but related, schemes of delegation for planning and related applications. This report relates solely to the scheme that was approved by the Council on 23<sup>rd</sup> July 2009 in accordance with the provisions of Section 43A of the Town and Country Planning (Scotland) Act 1997. That scheme allows the appointed officer, subject to certain exceptions, to determine applications for local developments.

The scheme identifies who will make the planning authority's decision on local development applications: whether it be the appointed officer (the Head of Planning and Sustainable Development) or elected Members through the Development Management Sub-Committee. This also influences the route for any subsequent appeal against refusal or non-determination of an application. The scheme is required by legislation, must be approved by Scottish Ministers, and is available on the Council's website.

The main advantage of delegating decisions on local development applications to the appointed officer is that it allows elected Members to concentrate more fully on planning applications of strategic importance, greater complexity or public concern. It also means that there can generally be a quicker turn around of applications. The Agendas for the Development Management Sub-Committee are also shorter and more manageable.

Changes to the planning regulations related to the Section 43A Scheme of Delegation are due to come into force on 30 June 2013 (The Town and Country Planning Development Management Procedure and Schemes of Delegation and Local Review Procedure (Scotland) Regulations 2013).

It is considered that the existing Scheme of Delegation has worked well and has allowed elected Members to concentrate on strategic matters, as anticipated by the Government. However, it is considered appropriate that the Scheme be reviewed in the light of experience of its operation over the last 4 years and taking into account changes to the regulations.

The main changes proposed to the Scheme, together with the reasons for these, are as follows:

- 1.) To remove the requirement for all local development applications in which the Council has an interest to be referred to Committee. This requirement to refer all Council interest developments was included in the Scheme because of a specific legislative stipulation that will be removed with the coming into force of the amended regulations on 30<sup>th</sup> June 2013. Removal of this requirement will mean that Council interest applications will be treated in the same way as all other applications. More significant and controversial applications in which the Council has an interest are likely to meet other triggers in the Scheme that will require referral to Committee (eg. more than 5 letters of objection). The benefit will be that minor or uncontroversial development (such as on street telecommunications equipment cabinets) will no longer have to be referred to Committee.
- 2.) To remove the requirement for local development applications advertised under Schedule 3 of the Development Management Procedure Regulations (formerly known "projects of public concern") to be referred to Committee. Aberdeen City Council is the only planning authority in Scotland that uses this as a trigger for referral to Committee and it has added uncontroversial minor applications to the agenda that could be dealt with by officers under delegated powers (eg small extensions to licensed premises and street cafes). It should be noted that more controversial applications in this category will likely meet other triggers in the Scheme that require referral to Committee (eg more than 5 letters of objection).
- 3.) To require all local development applications that are considered by the appointed officer to be contrary to the development plan strategy and that are recommended for approval to be referred to Committee. This is a criterion triggering referral to Committee that is operated by most other Schemes of delegation in Scotland and will ensure that the Committee has the opportunity to consider applications of this sort which are recommended for approval by the appointed officer because other material considerations outweigh the provisions of the adopted Development Plan.

Other less significant changes recommended include:-

- To remove the requirement to report to Committee where the Community Council or internal consultees (Roads or Environmental Health) have objected to a local development application and that application is recommended for refusal. Local development applications recommended for approval in such circumstances would still be referred to Committee.

- Provision to allow officers to extend the statutory time period for the determination of local development applications by written agreement with the applicant.

The full proposed amended scheme is contained in the appendix below.

Members should also note that changes to the 1973 Act Scheme of Delegation will be reported to Full Council in August to bring that scheme into line with any agreed amendments to the S43A Scheme.

## 6. IMPACT

The Scottish Government has stated that an effective planning service is fundamental to achieving its central purpose of sustainable economic growth. As such the information in this report relates to a number of Single Outcome Agreement Outcomes:

- 1 - We live in a Scotland that is the most attractive place for doing business in Europe;
- 2 - We realise our full economic potential with more and better employment opportunities for our people;
- 10 - We live in well-designed, sustainable places where we are able to access the amenities and services we need;
- 12 - We value and enjoy our built and natural environment and protect it and enhance it for future generations;
- 13 - We take pride in a strong, fair and inclusive national identity; and
- 15 - Our public services are high quality, continually improving, efficient and responsive to local people's needs.

Public – The report may be of interest to the development community and certain matters referred to in the report may be of interest to the wider community.

## 7. BACKGROUND PAPERS

None.

## 8. REPORT AUTHOR DETAILS

Harry Campbell, Team Leader, Planning and Sustainable Development  
E-mail [hcampbell@aberdeencity.gov.uk](mailto:hcampbell@aberdeencity.gov.uk)  
Telephone: 522393

## **APPENDIX PROPOSED AMENDED SCHEME**

In keeping with the aims of the Scottish Ministers that the planning system should respond in a more proportionate and efficient way to proposals that come before it and to ensure that applications for planning permission are dealt with in a way that is appropriate to their scale and complexity, Aberdeen City Council (ACC) as planning authority for the city have adopted this Scheme of Delegation.

This Scheme of Delegation has been prepared in pursuance of the provisions of Section 43A of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act), as introduced by Section 17 of the Planning etc. (Scotland) Act 2006, and in accordance with the requirements set down within The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008. The meaning of all words and phrases used within this Scheme, where not otherwise given, will be as provided for under the various Acts and Regulations referred to.

For the avoidance of doubt attention is drawn to the fact that, in accordance with the Planning etc. (Scotland) Act 2006, the Scottish Ministers will determine what applications fall into the category of "major development" or the category of "local development". There is no scope for local interpretation either by planning authorities, applicants or by other stakeholders.

"Local development" for the purposes of this Scheme of Delegation will include all development other than national development, as designated in a National Planning Framework document prepared and published by the Scottish Ministers under Part 1A of the 1997 Act; and major development, as identified in terms of The Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2009.

### **Scheme of delegation 1 (Scheme of Delegation for dealing with Local Development Applications under Section 43A of the Town and Country Planning (Scotland) Act 1997)**

#### **1. Appointed Officer**

ACC as planning authority, appoints the Head of Planning and Sustainable Development (a member of its professional planning staff) to act as the "appointed officer", whose duties, subject to the terms of paragraphs 2 and 3 hereof, shall be to determine, or, where appropriate with the agreement of the applicant, extend the time period for determination of:

- All applications for planning permission in respect of development within the category of local development
- All applications for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within the category of local development

## **2. Prohibition**

The appointed officer under this Scheme of Delegation is prohibited however from determining an application for planning permission for development within the category of local development, where that application:

- (i) has been made by or on behalf of
- an elected member of ACC, or
  - a member of staff employed within the Planning and Sustainable Development Service of the planning authority, or
  - the Chief Executive or any other member of the Senior Management Team (ie. Director level), of the planning authority

on the basis of the details on the application form

- (ii) is being recommended for approval and requires to be the subject of formal notification to the Scottish Ministers as defined in the Schedule to the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009, (or other Scottish Government Direction) or in respect of which the planning authority or Scottish Ministers have decided, an Environmental Impact Assessment should be undertaken
- (iii) is being recommended for approval and has been the subject of formal objection by the local Community Council within whose area the application site falls, or by the Council's roads or environmental health consultees
- (iv) following advertisement and/or notification has been the subject of six or more timeous letters of representation<sup>1</sup> that express objection or concern about the proposal – representing a significant level of opposition to any local development proposal.

## **3. Particular Circumstances**

The powers delegated to the appointed officer under paragraph 1 hereof are further qualified to the extent outlined in the provisions of Section 43 A (6) of the 1997 Act. Accordingly the planning authority may decide, for whatever reason, that the particular circumstances of an application which would in terms of this Scheme fall to be determined by the Appointed Officer are such that the application should be determined by the Development Management Sub-Committee. Applications shall be identified for potential treatment in accordance with the provisions of Sections 43A(6) and (7) of the Town and Country Planning (Scotland) Act 1997, by the Head of Planning and Sustainable Development who, in consultation with the Convener of the Development Management Sub-Committee, shall bring such cases to the notice of elected members in the form of a report to that Sub-Committee.

## Local Review Body

The Government's proposals for modernising the planning system involve changes to the appeals process. It continues, however, to be an important aspect of the modernised system that applicants who are unhappy with the terms of a planning decision have recourse to a process that enables an effective review of that decision to take place. It is also clear that people should have access to a review process which avoids unnecessary complexity or lengthy procedures that do not add value to the quality of a decision.

Accordingly, applicants for planning permission whose proposals are determined under this Scheme of Delegation will have the right to seek a review of the decision taken, by lodging a Notice of Review to that effect with the local planning authority.

A Notice of Review in accordance with the terms of regulation 9 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008, would require to be served on the Local Review Body within a period of three months from the date of the decision notice or (in a deemed refusal situation) from the date of expiry of the period allowed for determining the application.

### Notes

1. "Timeous representation" includes any representation received by the Council no later than 3 full days following the expiry of the time period specified for representations to be made following the date of notification or, if applicable, advertisement of the application (whichever is the later). An extended period will apply over the Christmas period and details will be posted in advance on the Council's website.

The definition of a letter or representation was agreed by the Development Management Sub Committee of 17 June 2010

- if more than one objection is submitted from a single individual or single e-mail address this only counts as one objection
- a letter with a number of signatures from one address counts as only one objection.
- a petition is counted as one objection

Finally a representation will only be counted if it is from a specified e-mail address or street address