

SUBJECT: Revision of Planning Scheme of Delegation

MEETING: Planning Committee

DATE: 03 May 2016

DIVISION/WARDS AFFECTED: All

1. PURPOSE:

To seek Planning Committee's endorsement of a revised Planning Scheme of Delegation to reflect changes to legislation and change to job titles, and to improve clarity.

2. RECOMMENDATION:

- 2.1 That the Planning Committee endorses the revised Planning Scheme of Delegation attached to this report, for adoption by Council.
- 2.2 That the Head of Planning be authorised to update the above documents in the future in relation to factual corrections to job titles.

3. KEY ISSUES:

- 3.1 The Planning (Wales) Act 2015 sets out a series of legislative changes to reform the planning system in Wales. Its Positive Planning Implementation Plan introduces changes to secondary legislation, policy and guidance and also introduces measures to support culture change.
- 3.2 The Planning (Wales) Act 2015 has made a series of improvements to modernise the planning enforcement system. The provisions will reduce the opportunities to delay effective enforcement action by preventing developers from repeatedly submitting either applications or appeals where they have already failed to obtain planning permission in circumstances set out in secondary legislation by the Welsh Ministers. Improvements introduced by the Act include:
 - providing local planning authorities with the power to require the submission of retrospective planning applications where unauthorised development can be regularised and controlled by planning conditions by the use of Enforcement Warning notices
 - providing a power to decline to determine retrospective planning applications for development that is subject to an enforcement notice.
 - The Act has also introduced the use of Temporary Stop Notices.

- With regard to development management procedures the Act introduces the use of Invalid Notices to which there is a right of appeal to the Planning Inspectorate.

3.3 The introduction of new legislation and procedures requires Authorities to review their schemes of delegation to include the issue of Temporary Stop Notices, Enforcement Warning Notices, invalid notices and to determine the Council's case in appeals against such notices and decline to determine an application for planning permission where an enforcement notice has been served prior to its submission. The Planning Scheme of Delegation to officers is proposed to be amended at A.3 to include "issue Invalid notices and determine the Council's case where there is an appeal against an Invalid Notice" and A.5 to include "and Section 32 where an enforcement notice has been served prior to the submission of the application. Section B is proposed to be amended to include g) enforcement warning notices under Section 43 and h) temporary stop notices under Section 171E. Clarification is also proposed regarding delegated powers for taking enforcement action at B.1. Also recent changes to the structure of the authority have resulted in the necessity to amend the titles of the officers and section to which the scheme of delegation relates.

3.4 The delegation to officers should be amended to read:-

- Chief Officer Enterprise
- Head of Planning
- Development Services Manager
- Planning Applications and Enforcement Manager
- Heritage Manager

Paragraph A.1 (d) should also be amended to read "... employee within the planning section or working closely with the planning section as a consultee e.g. Highways or housing officer. The reason for this is due to the size of the Enterprise Directorate with employees who have no connection with the planning function.

3.5 Following recent correspondence with the Ombudsman it is considered that the guide should make it clear that Town and Community Councils are not included in the "5 or more separate households or organisations" as they have their own rights to address Planning Committee. The guide is therefore proposed to be amended to clarify this at A.1(b).

3.6 The proposed changes to the Scheme of Delegation are shown in green in Appendix 1 below.

4. REASONS

The recommended changes will allow officers to issue Temporary Stop Notices and Enforcement Warning Notices, issue Invalid Notices and determine the Council's case where there is an appeal against an Invalid Notice, and decline to determine an application where an enforcement notice has been served prior to the submission of the application under delegated powers, reflect the present structure of the Authority and clarify the guidance.

5. FINANCIAL IMPLICATIONS

The proposed changes to the scheme of delegation reflect legislative changes which introduce additional tools or procedures into the Development Management service. Any additional work will be undertaken within existing budgets, and therefore there are no financial implications resulting from the proposed changes to the Scheme of Delegated Powers.

6. SUSTAINABLE DEVELOPMENT AND EQUALITY IMPLICATIONS

Sustainable Development: The proposals will improve the service to the Council's customers.

The Future Generation Assessment is attached at Appendix 2. It is considered that the proposals which aim to ensure consistency and equality of treatment on planning matters do not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person. The Scheme of Delegation and Code of Practice will be regularly monitored to address equality implications.

7. CONSULTEES:

Head of Legal Services
Head of Planning

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Appendix 1

Scheme of Delegation to Officers – Planning Service

A Guide to the Officer Delegation Scheme

The scheme aims to achieve an effective balance between

- efficiency of determination on the majority of non-contentious applications that have limited community impact,
- being reasonably simple and easy to understand, and
- the member/community aspect by ensuring member involvement on contentious applications through committee or the Delegation Panel and local ward member request for applications to be presented to committee;

The Delegation Panel consists of the Chair, Vice Chair and Opposition Spokesperson of Planning Committee. The Panel does not determine applications or enforcement matters. Its role is to assess whether officers should determine those applications presented to it or to refer them to Planning Committee for determination.

Definitions

“The Act” means the Town and Country Planning Act 1990 as amended [and to the Planning \(Wales\) Act 2015](#)

“Local Ward Member” means the member for the electoral division in which the application site is located.

Planning Application means

- (a) Applications for planning permission and approval of reserved matters.
- (b) Applications for Listed Building Consent.
- (c) Applications for Conservation Area Consent.
- (d) Applications for Express Consent to Display Advertisements.
- (e) Applications for Certificates of Lawfulness of Existing Use or Development under Section 191 of the Act (jointly with the Head of Legal Services).
- (f) Applications for Certificates of Lawfulness of Proposed Use or Development under Section 192 of the Act (jointly with the Head of Legal Services).
- (g) Applications to retain works or uses already carried out.
- (h) Applications to remove or modify conditions of planning permissions [or to make minor material amendments to an approved scheme under Section 73 of the Act](#).
- (i) Applications for an approval required by a development order.

- (j) Proposals by statutory undertakers
- (k) Notices of Proposed Development by Government Departments.
- (l) Hedgerow removal notices under the Hedgerow Regulations 1997.
- (m) Applications for non-material amendments to a planning permission.

Delegation to Officers

The delegation scheme authorises the following officers as set out in the scheme:

- Chief Officer Enterprise
- Head of Planning
- Development Services Manager
- Planning Applications and Enforcement Manager
- Heritage Manager

A. Planning Applications

A.1 To determine or make observations subject to A.2 on all applications unless:

- (a) The officer recommendation is contrary to a development plan policy or proposal or other planning policy of the Council
- (b) The application is to be recommended for approval and any of the following circumstances apply:
 - unresolved written objections on material planning grounds have been received from 5 or more separate households or organisations, (excluding Town or Community Councils) or
 - it is contrary to the advice of a statutory consultee, or
 - the community or town council has objected on material planning grounds and wishes to address Planning Committee
- (c) The application is:
 - by or on behalf of the Council and unresolved objections on material planning grounds have been received, or
 - for development on Council-owned land or in which the Council has a direct interest
- (d) The application is submitted by an employee of the Council who works within the Planning Section or one who has close involvement in the planning application process or a member or co-opted member of the Council or by a close relative of such an employee or member or where the application relates to land in which any of them have an interest
- (e) The local ward member has requested in writing that the application is presented to Planning Committee giving planning reasons for that request.

A.2 In consultation with the Delegation Panel to determine or make observations on applications except for those relating to householder development, advertisement applications and applications for Listed building and

Conservation Area Consent where the application is to be recommended for approval and:

- unresolved written objections on material planning grounds have been received from 1 – 4 separate households or organisations, **excluding Town and Community Councils** or the **Community or Town Council** has objected **on material planning grounds** and does not wish to address Planning Committee, or
- the application is one to which A.1 (c) relates and no unresolved objections on material planning grounds have been received, or
- the Local Ward Member has requested in writing the application is referred to the Delegation Panel **giving planning reasons for that request.**

For the avoidance of doubt, applications for householder development, advertisement consent, and Listed Building and Conservation Area Consent, shall be determined by officers unless the Local Ward Member has requested in writing the application is referred to Planning Committee or the Delegation Panel, giving planning reasons for that request. All other applications are delegated to officers to determine, including Non Material Amendments, applications for an approval required by a development order, proposals by statutory undertakers, Notices of Proposed Development by Government Departments and Hedgerow removal notices under the Hedgerow Regulations 1997.

A.3 To determine:

- the Council's case where there is an appeal against non-determination of an application
- the discharge of planning conditions requiring the specific approval of the Local Planning Authority
- to enter into obligations under Section 106 of the Act jointly with the Head of Legal Services, where it has been decided that planning permission should be granted subject thereto
- that an application is a departure from the development plan
- whether an Environmental Assessment is required **and scoping the content of that Assessment**
- whether an Appropriate Assessment is required under the Conservation (Natural Habitats etc.) Regulations 2010 (as amended).
- **Local Impact Reports for Development of National Significance**
- **Whether an application is valid, issue an Invalid Notice and determine the Council's case where there is an appeal against such a Notice.**

A.4 To make observations on planning consultations received from Brecon Beacons National Park and adjoining authorities.

A.5 To decline to determine an application for planning permission under the powers of Section 70A of the Act **and Section 32 (where an enforcement notice has been served prior to the submission of the application).**

A.6 To make all necessary decisions on procedural matters in connection with the processing of applications and appeals.

B. Enforcement of Planning Control

B.1 In consultation with the Delegation Panel to determine that it is expedient to take action and to issue the following notices ~~other than those specified in Part B.4~~ and thereafter to take all necessary steps to remedy the breach .

- (a) Enforcement Notices **and Stop Notices** under Section 174 of the Act
- (b) Listed Building Enforcement Notices under Section 38 of the Listed Building and Conservation Areas Act 1990
- (c) **To take prosecution proceedings and/or injunctions and/or action under the Proceeds of Crime Act, in consultation with the Head of Legal Services.**
- (d) Notices under Section 215 of the Act

B.2 In consultation with the Delegation Panel to determine that it is not expedient to take enforcement action.

B.3 To determine that it is expedient to take action and to issue the following notices and to take all necessary steps to remedy the breach:

- (a) Planning Contravention Notices under Section 171C of the Act (to require information).
- (b) Breach of Condition Notices under Section 187A of the Act.
- (c) Enforcement Notices where planning permission has been refused for the development.
- (d) Listed Building Enforcement Notices under Section 38 of the Listed Building and Conservation Areas Act 1990
- (e) Breach of Condition Enforcement Notices.
- (f) Hedgerow Replacement Notices under the Hedgerow Regulations 1997.
- (g) **Enforcement Warning Notices under Section 43**
- (h) **Temporary Stop Notices under Section 171E**

B.4 To consider offers and representations made under Section 171C(4) of the Act (responses to Planning Contravention Notices).

B.5 To remove **or obliterate** unauthorised advertisements, placards and posters under Sections 224 and 225 of the Act.

C. Heritage

C.1 In consultation with the Delegation Panel

- To serve building preservation notices under Section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in cases of emergency.
- To authorise urgent works under section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

C.2 To approve grants for historic buildings under Historic Town Schemes.

D. Entry onto Land

D.1 To authorise persons to enter land under

(a) Sections 196A, 214B and 324 of the Act

(b) Section 95 of the Building Act 1984

(c) Section 293 of, and paragraph 7 of Schedule 12A to, the Highways Act 1980

(d) Section 71 of the Road Traffic Regulation Act 1984.

E. Miscellaneous

E.1 To respond on behalf of the Council to HGV operator's licence applications.

E.2 To respond to Welsh Government consultations on planning policy or development management or related matters.

Appendix 2 – see separate document