

BODY: **PLANNING**
DATE: **4 September 2007**
SUBJECT: **DELEGATION OF PLANNING POWERS**
REPORT OF: **PLANNING MANAGER**

Ward(s): All

Purpose: To seek Members' approval to revised delegated planning powers in order to (a) improve planning performance and (b) to formalise arrangements for "screening opinions" in respect of Environmental Impact Assessment.

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Recommendations:

- (a) That the current scheme of delegation to officers be amended to allow the following matters to be determined under delegated powers:
 - (i) the refusal of planning applications;
 - (ii) approval of applications where up to five objections are received;
 - (iii) environmental impact screening opinions.
- (b) That the matter be referred to Full Council for approval.

1.0 Background

1.1 The current delegated powers in respect of planning decision making were approved by Full Council in September 1999.

1.2 The purpose of delegation is to:

- improve performance
- simplify procedures
- speed up the process
- minimise costs
- leave Committee Members more time to concentrate on more complex or controversial planning issues.
- allow Officers to devote a greater proportion of their time to more complex and controversial applications

- 1.3 The present delegation of planning decisions results in less than 80% being made by the Planning Manager under delegated authority, with the remainder being determined by the Planning Committee.
- 1.4 The current scheme of delegation is attached as an Appendix to this report.

2.0 Planning Performance and the Planning Delivery Grant

- 2.1 The Government places greater emphasis than ever before on planning performance and the amount of Planning Delivery Grant (PDG) each local planning authority receives has been based to a significant extent on its speed of decision making. Major applications are measured against a 13 week target and Minor and Other applications are measured against an eight week target.
- 2.2 In 2006 the Borough Council determined 95% of Major applications within 13 weeks, 93% of Minor applications within 8 weeks and 93% of Other applications within 8 weeks. This is a significant improvement on the previous year, when the statistics had been 81%, 74% and 82%, respectively. Increased delegation of the more straightforward applications would greatly assist in maintaining these improvements.
- 2.3 A review of delegated powers would be unlikely to have much impact in respect of Major applications but it would help to improve performance in relation to Minor and Other applications.
- 2.4 2007/08 is the final year for the PDG in its present format, after which it will be replaced by a new form of grant called the Housing and Planning Delivery Grant, the purpose of which will be to provide an incentive to local authorities and other bodies to respond more effectively to local housing pressures and encourage improvements in the planning system.
- 2.5 The precise format for this new grant and the way in which it will be allocated are as yet unclear. If part of the grant allocation continues to be based on speed of planning performance then there are clear incentives to continue to improve our speed of decision making, through the broadening of delegated powers.
- 2.6 If, however, the emphasis shifts away from speed of decision making then the loss of grant aid in this area could have a significant effect on existing staffing resources, as there are currently two members of the Development Control team on temporary contracts paid for by PDG. In these circumstances there would be the need to streamline existing processes, which would be assisted by an increase in delegated powers.

3.0 Comparison with other Local Planning Authorities

- 3.1 The table below, for the year ending December 2006 shows that Eastbourne has the lowest percentage of decisions delegated to officers in East Sussex:

Local Planning Authority	Percentage of decisions delegated to officers
Brighton & Hove	96
Wealden	93
Lewes	91
Rother	88
Hastings	83
Eastbourne	76

- 3.2 Out of a total of 354 local planning authorities nationally (including unitary authorities and London Boroughs) only 13 have a lower percentage of decisions delegated to officers than Eastbourne. The national average for delegated decisions in the above year is around 90%.

4.0 Proposed Changes to the Scheme of Delegation to Officers

- 4.1 In general the current scheme of delegation works reasonably well and is broadly comparable with the delegated schemes operated by other authorities in East Sussex. There is, however, one significant area where the Eastbourne scheme differs from those adopted by the other five authorities listed in the table above and that is in respect of decisions to refuse planning permission. At present all applications where the officer recommendation is to refuse permission are determined by the Planning Committee, whereas all other authorities in the County have delegated authority to refuse permission.
- 4.2 The table below shows the number of applications that would have been delegated under the current scheme if refusals were included.

Committee Date	Potential delegated items
2005	
26 April	3
24 May	3
21 June	3
19 July	0
9 August	0
6 September	2
4 October	3
1 November	6
6 December	14
2006:	
10 January	9
7 February	2
7 March	3
4 April	4

25 April	9
23 May	10
20 June	7
18 July	2
8 August	5
5 September	4
3 October	7
31 October	2
5 December	1
2007:	
9 January	1
6 February	2
6 March	5
Total	107

4.3 The total number of decisions between April 2005 and March 2007 was approximately 1650, of which some 1290 (78%) were determined under the current delegated powers. The above table indicates that to allow refusal of the less controversial applications would have increased the number of delegated decisions, in respect of applications received between these dates, to around 1400. On this basis such a change would result in an increase in the percentage of delegated decisions from 78% to around 85%. This would still not achieve the national average of around 90%

4.4 In order to bring Eastbourne more in line with the national average it would be necessary to examine other ways in which delegated powers could be increased. The only readily identifiable way in which this could occur is by increasing the threshold in the number objections received before an application is automatically determined by the Planning Committee. At present this is triggered by more than three objections.

4.5 The table below, which covers the same period (April 2005 to March 2007), illustrates the typical increases in the percentage of delegated items which could be expected by increasing the threshold by up to 10 objections:

Threshold Increase	Total no. of extra apps that would be delegated	% of delegation
Up to 4 objections	19	85.8
Up to 5 objections	36	86.8
Up to 6 objections	47	87.5
Up to 7 objections	55	88.0
Up to 8 objections	57	88.1
Up to 9 objections	60	88.3
Up to 10 objections	61	88.6

4.6 The delegated arrangements for other authorities in the county in respect of the number of objections which can be accepted without

committee involvement are shown below:

LPA	No. of objections under delegated authority
Brighton & Hove	up to 5
Wealden	If there are more than three objections then the Ward Member has 48-hours to decide whether the application should go to Committee. If the application goes to Committee then material planning reasons need to be given by the Ward Member. If there is no response within the 48-hour period, the case goes to the Chair and the Deputy Chair of Planning for consideration and the same process is repeated. If there is no response from the Ward Member, the Chair and the Deputy Chair, the application is delegated (approval or refusal).
Lewes	No limit on the number of objections. However, where objections are received, the Director of Planning and Environmental Services has authority to determine an application if he/she is satisfied that the objections could not form the basis of a sustainable reason for refusal.
Rother	Similar to Lewes. No specific limit on the number of objections which can be considered under delegated powers, but each objection is considered on its merits and if considered to have a material impact then the application would be referred to committee.
Hastings	Up to 2

With exception of Hastings, all other authorities in the County have wider powers to deal with a higher level of objections than Eastbourne. Brighton and Hove currently have the highest percentage of applications dealt with under delegated authority, with only a slight increase on Eastbourne's scheme. The proportion of minor applications received in Brighton and Hove is similar to that of Eastbourne, although recent delegated lists at Brighton and Hove have shown that some relatively complex applications have been dealt with under delegated powers.

- 4.7 It is proposed, in line with the scheme of delegation in Brighton and Hove, that the number of objections under which applications can be considered within delegated authority be increased from three to five. This gives a definitive trigger that clearly defines when an application should be considered by Committee. This would give Eastbourne a delegation rate in the order of 87%, an increase of around 10%, putting us about midway in the table of East Sussex Authorities.
- 4.8 The present arrangements whereby the Chairman, Deputy Chairman, Opposition Spokesperson or a ward Member can request

that an application be determined by the Planning Committee would remain in place. The weekly meeting between the Chairman and Development Control Manager to consider the delegated applications would also continue, as at present.

5.0 Screening opinions

- 5.1 The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 established Environmental Impact Assessment (EIA) as a process for identifying the environmental effects (both positive and negative) of proposed developments before development consent is granted. The aim of EIA is to prevent, reduce or offset the significant adverse environmental effects of development proposals, and enhance positive ones. It is a means to ensure that planning decisions are made in the knowledge of the attendant environmental effects and with full engagement of statutory bodies, local and national groups and members of the public. Very few applications submitted to the Council would trigger the requirement for an EIA.
- 5.2 The process of deciding which projects require EIA is known as "screening". An applicant for planning permission may ask the planning authority for a "screening opinion" before submitting the application. Alternatively, where a planning application is submitted without an Environmental Statement (ES), and a screening opinion or screening direction has not previously been issued, the authority must determine whether the application falls within a class of development listed in either Schedule 1 or 2 of the Regulations and, for any that fall within Schedule 2, whether the project will have a significant effect on the environment. The Council has to issue an opinion within 3 weeks of the date of receipt (although the Regulations do allow extensions to the 3 week period provided they are agreed in writing with the applicant).
- 5.3 Schedule 1 projects are major infrastructure projects such as power stations and airports and therefore it is highly unlikely that a Schedule 1 project would be proposed in Eastbourne. All Schedule 1 projects would require a full EIA. It is the Schedule 2 projects that require a screening opinion to decide whether an EIA is required. In particular, applications for the following types of development would fall within Schedule 2:
- Industrial development (exceeding 0.5 hectare)
 - Urban developments (exceeding 0.5 hectare). Includes:-
 - residential development
 - retail development
 - car parks
 - leisure developments
 - Cumulative effect – where development forms part of a bigger project in respect of which multiple applications might be submitted

- 5.4 On the relatively infrequent occasions where a screening opinion is required, it has been the normal practice for the officer dealing with the planning application to be responsible for the screening opinion. This is standard practice in other local authorities.
- 5.5 However, as the decision is taken on behalf of the local planning authority, it has been recently highlighted in best practice notes from central government's Communities and Local Government department that, if the decision is to be made by officers, it is important to ensure that they have delegated authority to do so before they make the decision and that failure to comply with this will leave subsequent planning decisions open to successful legal challenge.
- 5.6 For this reason, and because of the short timescale for dealing with screening opinions, it is requested that the Scheme of Delegation be amended to formalise the process of officers providing screening opinions for relevant development proposals.

6.0 Consultation

- 6.1 No external consultations have been undertaken in compiling this report.

7.0 Financial Implications

- 7.1 The proposed changes would result in no financial costs to the Council but would improve the authority's position in respect of future planning performance and, in respect of the EIA regulations, safeguard the Council against the possibility of a legal challenge.

8.0 Human Resource Implications

- 8.1 The revised delegation arrangements would allow officers to devote a greater proportion of their time to more complex and controversial applications.

9.0 Human Rights Implications

- 9.1 There are no Human Rights implications. The current arrangements whereby an objector can request to address the Committee would remain in place and in cases where a request to speak is received in respect of a potential delegated item that application would automatically become a Committee item. Applicants who have their applications refused under delegated powers have the right of appeal.

10.0 Other Implications

- 10.1 There are no youth, anti-poverty, equalities or community safety implications as a direct result of this report.

11.0 Conclusion

- 11.1 The proposed change to delegated arrangements would lead to an improved performance in respect of the speed of determining planning applications and would make more efficient use of Member and officer time in dealing with Major and more controversial applications. It would also ensure that the current processes for dealing with screening opinions are formalised to avoid potential legal challenge.
- 11.2 It is therefore recommended that clause 4.1(a)(ii) in the Scheme of Delegation to Officers be deleted, the word "four" in clause 4.1 (a)(iii) be amended to "six", and that the following clause be added:
- 4.1 (i) "Screening opinions" under The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.
- 11.3 Members are asked to consider and endorse the revised delegated arrangements and resolve that they be submitted to Full Council with a recommendation for adoption as a change to the Council's constitution.

Ian Hayes
Development Control Manager

Background Papers:

The Background Papers used in compiling this report were as follows:

The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

To inspect or obtain copies of background papers please refer to the contact officer listed above.

'Ntfilesserver' (J:)/2007 Agenda reports/Proposed amendments to scheme of delegation

APPENDIX

Current Scheme of Delegation to Officers

4.1 Planning

Determining the following matters is delegated to the Planning Manager subject to the restrictions and conditions referred to :-

- a) An application for Planning Permission including reserved matters, Listed Building Consent, Conservation Area Consent or an application for consent to display an advertisement except where :-
 - i) The development would not be in accordance with the approved or more current draft County Structure Plan or of any adopted or more current draft Local Plan (Minerals, Waste or Borough wide);
 - ii) The Planning Manager considers the proposal should be refused;
 - iii) The application has attracted four or more letters of objection from different households or businesses or a petition and the grounds of objection are considered to be material planning considerations;
 - iv) That an objector wishes to address the Planning Committee provided such a request has been made within the specified consultation period for the application;
 - v) The application was submitted by or on behalf of a Councillor of the Authority (or their spouse/partner) or by Council's staff (or their spouse/partner) who are part of the Corporate Management Team, are Assistant Directors or work in the Planning Division;
 - vi) The Planning Manager considers should be presented to Committee for decision;
 - vii) The Chairman, opposition spokesperson or any ward Councillor requests, in writing to the Planning Manager, that the application should be determined by the Committee, provided that any such request is made within 21 days of circulation of the weekly list of applications*. (*The letter to the Planning Manager should include the Councillor's reasons for referral to the Committee).
- b) Observations on applications for planning permission to be determined by the County Council. The Planning Manager will prepare a response and consult with the Planning Committee Chairman.
- c) Observations on applications for planning permission to be determined by Wealden District Council. The Planning Manager will prepare a response and consult with the Planning Committee Chairman.

- d) An application for consent under a tree preservation order to the topping or lopping of trees or to the cutting down or destruction of trees when the decision is supported by the Council's Arboricultural staff consulted on the proposal.
 - e) An application for a Certificate of Lawful Use or Development including existing and proposed use or development.
 - f) Authorising Tree Preservation Orders and confirmation of such Orders which are unopposed.
 - g) Approval of any matters required to be submitted pursuant to conditions or legal agreements imposed on any permission, consent or approval given under the Town and Country Planning Acts.
 - h) Minor amendments to proposals with existing consent.
- 4.2 Determining applications within Conservation Areas within the statutory period Where an application is within a conservation area and it is not possible for it to be considered by the Conservation Area Advisory Group prior to determination by the Planning Committee or Planning Manager within the statutory eight week period, the Planning Manager will consult with the Chairman of the Conservation Area Advisory Group and the Historic Buildings Advisor.