

**WIRRAL COUNCIL**

**CABINET**

**9 APRIL 2009**

**COUNCIL**

**27 APRIL 2009**

**REPORT OF THE DIRECTOR OF TECHNICAL SERVICES**

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**AMENDMENT TO THE SCHEME OF DELEGATION TO OFFICERS FOR THE DETERMINATION OF PLANNING APPLICATIONS AND PLANNING RELATED MATTERS**

**1. EXECUTIVE SUMMARY**

- 1.1 This report recommends that the current Scheme of Delegation relating to the determination of planning applications and other associated planning matters including enforcement action be revised. The proposed changes to the Scheme of Delegation are as stated in Appendix **B** attached to this report.
- 1.2 The provision of an effective development control service is an essential part of protecting and enhancing the environment, and contributes to committing to excellence. A more efficient development control service will result in savings in officer and Committee time and resources.
- 1.3 At Planning Committee on 12 March 2009 and Regeneration & Planning Strategy O&S Committee on 18 March 2009, Members endorsed these proposed changes to the Scheme of Delegation.
- 1.4 Cabinet Members are now asked to endorse the proposals and recommend to Council that the revised Scheme of Delegation be adopted as defined in Appendix **B**. The adoption of the revised scheme of delegation will free up resources that will then be focused on improving performance and service delivery and enable the Planning Committee to focus upon the more complex, detailed and controversial planning applications and enforcement matters.

**2. BACKGROUND**

The purpose of delegation is to simplify procedures, speed up the process, minimise costs and leave the Planning Committee Members with more time to concentrate on major or controversial planning issues. A well-constructed scheme allows action to be taken by officers in order to deliver decisions more efficiently, particularly having regard to National Indicator 157 relating to the performance on delivery of planning decisions.

It is important, however, to ensure that such a scheme allows efficiency of service without prejudicing the opportunities of local residents to have their views taken into consideration. It is hoped that the proposed scheme of delegation would provide a development control service that is responsive and meets customer service objectives of efficiency, effectiveness and equality.

The Scheme of Delegation for development control was last reviewed in 2006. In 2007, 90% of the total number of planning applications were determined under delegated authority by officers. In 2008, this figure was 91%.

Considerable officer time and resources are expended in preparing for and presenting reports to Planning Committee, and the need to report to Committee inevitably adds to the length of time required to reach a decision. Applications that are reported to Planning Committee are rarely determined within the statutory timescales, which impacts on the Council's ability to achieve its agreed performance targets under National Indicator 157 (formerly BV109).

Members will also be aware that a number of key major infrastructure and development proposals are planned for the Wirral, not least the Wirral Waters development. It is therefore important to ensure that arrangements are in place that enable both Members and officers to deal with this workload and associated challenges efficiently and effectively as they are presented to them.

Concern is sometimes expressed that applications decided under delegated powers are outside of Members' control. However, an examination of the proposed Scheme of Delegation will show that Members remain in complete control of the delegation process. They determine the development plan policies within which all applications will be judged, and they also determine other Council policies, standards and guidance, within the context of which applications are made. Members also decide the terms on which the Scheme operates, the level of Member involvement, and the circumstances in which an officer's delegated authority to make a decision may not be exercised.

### **3. PROPOSED CHANGES TO THE SCHEME OF DELEGATION**

The existing scheme of delegation is attached as Appendix A for Members information and reference. The proposed changes are highlighted in bold and italic text in attached Appendix B. However, the changes can be summarised as follows:

- a) All Enforcement action delegated to officers.
- b) Delegated authority to refuse all planning applications

- c) Delegated authority to determine applications for works to Grade I Listed Buildings
- d) Delegated authority to determine applications requiring minor Section 106 Agreements
- e) To require Members who are removing applications from delegation to do so prior to the expiration of the last date for comment

In respect of proposal a) it is proposed that all enforcement action is delegated to officers for action. Members have been anxious in recent years that where breaches of planning control have been alleged that speedy investigation takes place and where necessary, formal enforcement action ensues. Bringing reports to Planning Committee for approval of enforcement action can sometimes result in avoidable delays. It is noted that in cases where the enforcement team have recommended enforcement action be taken, Members have supported such recommendations. In fact, it is only where officers have recommended that taking enforcement action would not be expedient that Members have historically debated or raised issues with officer recommendations. So it is proposed that in order to avoid delays in pursuing formal enforcement action, that authority for all enforcement action is delegated to officers. However, it should be pointed out that Members will still retain control over the delegation process. This is due to the fact that Members currently receive weekly lists of enforcement complaints that have been logged with the department and where Members have concerns, they may still request that a particular matter is brought to the committee for consideration. However, it is proposed that where officers **do not** intend to take formal enforcement action, that a report will be brought to Members outlining the reasons for non-expediency for their approval. In this instance, Members retain control over whether formal action is actually taken or not. This will apply to all matters relating to Priorities 1, 2 and 3 of the adopted Enforcement Policy. For the avoidance of doubt, these include:

**Priority 1 (Statutory/Legislative Requirements)**

- Licensing consultation
- Certificate of Lawfulness for Existing and Proposed Development
- High Hedge Complaints
- Listed Buildings and Protected Trees.

**Priority 2 (Controversial Development)**

- Councillors Complaints/Concerns
- MP's Complaints/Concerns
- Committee Approvals (conditions/approved plan monitoring)
- Controversial sites with a wide community interest, such as development of a large scale that results in unacceptable harm to amenity

### **Priority 3 (Council Objectives)**

- Concerns of other departments - risk to health, traffic hazard etc
- Delegated decisions (Conditions/approved plans monitoring)
- Advertisements
- Changes of use (substantial and/or contrary to policy)
- Development in sensitive areas i.e. Green Belt, Conservation areas
- Major commercial development (changes of use, buildings and extensions)

Members will also receive **quarterly** reports from the Principal Enforcement Officer to update them on the Enforcement matters that have been investigated and actioned during the previous 3 months. This will outline what enforcement action has been taken and the results of such action for Members information.

In respect of proposal b), it is proposed that all refusals of planning permission have delegated authority, including majors. Officers currently have delegated authority to refuse minor applications but currently all majors, regardless of recommendation are required to come before planning committee. Where officers are like-minded to refuse a major application, they will be required to notify Ward councillors of their reasons for refusal and unless officers receive notification from Members that they would like to support the application on planning grounds, the application will subsequently be refused under delegated powers. This will reduce the number of major applications that currently come before committee quite considerably. It is extremely rare that officers and Members disagree on recommendations to refuse planning permission. In the event that a petition of objection has been received, if the officer is like-minded to refuse then the lead petitioner will be notified that the application will be refused under delegated powers and notification of the decision sent to them. This proposal also encompasses telecommunications development. It may be of interest to Members that neighbouring Local Planning Authorities, such as Liverpool City Council do not require applications with recommendations of refusal to be considered by their Planning Committees. This is a practice that is also quite common throughout England and Wales.

In respect of proposal c), it is proposed that all applications for planning permission and listed building consent affecting Grade I Listed Buildings are dealt with under delegated powers. At present, applications affecting all Grade II\* or Grade II Listed Buildings are determined under delegated powers, except in those instances where a Member has requested the application is determined by Planning Committee or the Council receives a qualifying petition. The requirement to bring applications affecting Grade I listed buildings to committee stems from the fact that such applications must be referred to the Government Office for the North West and is therefore caught up by the clause in the existing scheme of delegation that all decisions that need to be referred to the Secretary of State need to be

determined by Committee. Under the revised scheme, where there are no objections to such proposals on conservation grounds, officers would be able to refer the application to GONW with a recommendation without first requiring the application to come before Planning Committee. In the event of conservation-based objections (or receipt of a qualifying petition or a Member request to remove such an application from delegation) such applications will be reported to committee. All other applications that need to be referred to the Secretary of State will still come before the Planning Committee as per the existing scheme of delegation.

In respect of proposal d), it is proposed that any applications requiring minor section 106 agreements would be determined under delegated powers. Such applications would be limited to the provision of litter bins or minor traffic/highway improvements, such as Traffic Regulation Orders, where the financial contribution of the developer is less than £10,000. Applications requiring Section 106 Agreements are rarely dealt with within the timescales set out in NI 157, and this is often related to the fact that such applications currently need to come to Planning Committee first. If Members are like-minded to support this proposal, it is intended that the Council's Section 106 Officer will report to Members on a **quarterly** basis to advise them of the number of S106 Agreements negotiated and agreed during the previous 3 months and the monies involved. It is proposed that all applications requiring substantial Section 106 Agreements and/or financial contributions by a developer will continue to be reported to Planning Committee.

In respect of proposal e), it is proposed to require Members who are removing applications from delegation to do so prior to the last date of comment. By giving officers the earliest possible indication that they wish to remove applications from delegation allows them to still report to Planning Committee and determine application within the timescales laid out by NI 157. All such requests should be done in writing and specify the planning reasons for doing so, as per the existing scheme of delegation.

#### **4. CONCLUSIONS**

The Technical Services Department and the Development Control Division are committed to continuous improvement and the performance in the determination of planning applications, and this is closely scrutinised through the Council's Performance Information Management System. The Development Control National Indicator (NI157) has been identified as one to the Council's key corporate NI's. The implementation of the changes to the Scheme of Delegation as outlined above would free up resources and allow officers to go some considerable way to achieving this objective.

Members still retain ultimate control over all aspects of the scheme of delegation in so much as they may remove any application from

delegation at any time and this is also the case for all enforcement related matters. By freeing up some of those applications that are currently required to come to Planning Committee for resolution, Members are able to concentrate and focus their attention on the larger schemes that will be coming in front of them that potentially have more lasting and strategic implications.

## **5. FINANCIAL AND STAFFING IMPLICATIONS**

- 5.1 A more efficient development control service will result in savings in officer and Committee time and resources. NI 157 is currently exceeding locally set targets for major applications and others, but minors are struggling due to a large percentage of them being referred to Planning Committee for various reasons, the larger proportion of which relate to Member requests for them to be removed from delegation. The second most common reason for bringing these applications to committee is the receipt of a qualifying petition and at the moment, even if the application is recommended for refusal, the existing Scheme of Delegation requires that these applications are considered by the Planning Committee. Agreement to the amendments to the scheme of delegation as outlined above will result in further improvements in service delivery and performance.

## **6. EQUAL OPPORTUNITY IMPLICATIONS**

- 6.1 There are no equal opportunity implications arising directly from this report.

## **7. COMMUNITY SAFETY IMPLICATIONS**

- 7.1 There are no community safety implications arising directly from this report.

## **8. LOCAL AGENDA 21 IMPLICATIONS**

- 8.1 The changes introduced will allow for improvement in the provision of planning services to Wirral's residents.

## **9. LOCAL MEMBER SUPPORT IMPLICATIONS**

- 9.1 The report will be of interest to all Members of the Council.

## **10. HUMAN RIGHTS IMPLICATIONS**

- 10.1 There are no human rights implications arising directly from this report.

## **11. ANTI-POVERTY IMPLICATIONS**

- 11.1 There are no known anti-poverty implications arising directly from this report.

## **12. SOCIAL INCLUSION IMPLICATIONS**

- 12.1 There are no known social inclusion implications arising directly from this report.

## **13. BACKGROUND PAPERS**

- 13.1 The following background paper was used in the preparation of this report:

Existing Approved Scheme of Delegation (October 2006)

## **14. RECOMMENDATION**

- 14.1 Cabinet Members are asked to endorse the proposals and recommend to Council that the amendments to the Scheme of Delegation be adopted as set out in **Appendix B**.

### **D GREEN**

Director of Technical Services

This report was prepared by Matthew Davies of the Development Control Section who can be contacted on 606 2246