

REPORT TO: POLICY & RESOURCES COMMITTEE - 9 FEBRUARY 2009

REPORT ON: AMENDMENTS TO THE SCHEME OF DELEGATION ON DEVELOPMENT QUALITY MATTERS

REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION

REPORT NO: 101-2009

1 PURPOSE OF REPORT

- 1.1 To make recommendations on proposed changes to the Council's Standing Orders and Scheme of Administration relative to improving the efficiency of the Development Quality Committee.

2 RECOMMENDATION

- 2.1 To note paragraph 28 of the Council's Standing Orders relative to the Reception of Deputations and agree that these requirements be applied to all deputations to the Development Quality Committee.
- 2.2 To agree to amend the Council's Scheme of Delegation of Powers to Officers of the Council relative to the Planning & Transportation Department as detailed in Appendix Three of this report.
- 2.3 Refer this report to the Development Quality Committee for noting.

3 FINANCIAL IMPLICATIONS

- 3.1 Although there are no financial implications directly arising from this report, the recommendations are likely to result in improved business efficiencies which will allow staff time to be redirected towards other pressing workloads resulting in improved statutory performance levels.

4 BACKGROUND

- 4.1 Reference is made to the decision of the Development Quality Committee on 1 November 2008 to remit the Director of Planning & Transportation and the Depute Chief Executive (Support Services) to prepare a report to the Policy & Resource Committee seeking amendments to the Council's Scheme of Delegation as outlined in Report 491-2008 and taking into account the matters discussed at the Development Quality Forum held on 26 November 2008.

5 PROCEDURES FOR DEPUTATIONS TO DEVELOPMENT QUALITY COMMITTEE

- 5.1 Report 491-2008 suggested a number of revisions to the deputation arrangements at DQ Committee and these were the subject of some debate both at the Committee of 17 November 2009 and at the DQ Forum of 26 November 2008. A number of valid opinions were expressed on this subject with no overall consensus emerging.
- 5.2 Having reviewed our existing Deputation procedures as detailed in paragraph 28 of the Council's Standing Orders (see Appendix One), it is considered sufficient that these are not amended but that they be applied in full to all deputations to the DQ Committee. In particular, the time limit of seven minutes shall remain, but where

there is more than one speaker comprising a deputation, then they must share that maximum period of seven minutes as currently required in paragraph 28(3).

6 DELEGATION OF POWERS TO THE DIRECTOR OF PLANNING & TRANSPORTATION

6.1 Report 491-2008 suggested a number of amendments to the existing scheme of delegation to the Director of Planning & Transportation relative to Development Quality matters. These were debated at DQ Committee on 17 November and at DQ Forum on 26 November and there was an overwhelming consensus in favour of the proposed changes.

6.2 The current Scheme of Delegation on Development Quality is detailed in Appendix Two and it is proposed that this be amended as detailed in Appendix Three in order to achieve the following benefits;

- a a more efficient and effective discharge of business at DQ Committee;
- b allowing decisions to be made at the appropriate level having regard to their significance;
- c maintaining appropriate levels of openness, accountability and inclusiveness;
- d interim scheme can be used to assess impact of increased delegation prior to the new planning legislation coming into effect next summer.

It is proposed that the new scheme becomes effective from 1 March 2009.

7 OTHER POSSIBLE IMPROVEMENTS TO PROCEDURES

7.1 Report 491-2008 also suggested some further opportunities to amend/improve Development Quality procedures and these were also fully discussed by DQ Committee and Forum with the following conclusions;

- a All future correspondence on deputation requests will be addressed to the applicant/objector as opposed to their agent.
- b Applications which are subject of heard deputations will be determined immediately following the hearing of the deputation(s).
- c The Director of Planning & Transportation (or his nominee) will give a short oral summary of each application report prior to the application being considered or any associated deputation being heard.
- d The Director of Planning & Transportation will actively examine opportunities to pursue the greater use of information technology and electronic visual aids at DQ Committee. However, Deputations will not be permitted to refer to any written or visual material at Committee unless this information was submitted at the time of a valid and timeous application/objection.
- e Any proposals to amend the timing of DQ Committee meetings or the membership of the Committee will be deferred until details are available of the new planning legislation.

None of the above matters require any amendments to the Council's Standing Orders or Scheme of Administration.

8 POLICY IMPLICATIONS

- 8.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

9 CONSULTATIONS

- 9.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), Head of Finance and Assistant Chief Executive and Convener of DQ have been consulted and are in agreement with the contents of this report.

10 BACKGROUND PAPERS

- 10.1 Report 491-2008

Mike Galloway
Director of Planning & Transportation

MPG/MS

30 January 2009

Dundee City Council
Tayside House
Dundee

APPENDIX 1 : CURRENT STANDING ORDER REGARDING THE RECEPTION OF DEPUTATIONS

- Para 28 (1) All applications requesting the Council to receive a deputation shall be in writing, duly signed, addressed and, where possible, delivered to the Chief Executive at least five clear working days prior to the date of the meeting at which the subject may be considered. Any later requests for deputations to be received shall be reported to the meeting and shall be dealt with in accordance with the provisions of the remainder of this Standing Order except in the case of the Development Quality Committee where no later requests for deputations will be considered or reported.
- (2) No deputation exceeding ten in number shall be received by the Council or any Committee.
 - (3) Not more than two speakers on any deputation shall be heard, and the time allowed to the deputation for speaking shall not exceed seven minutes except at the discretion of the Convener.
 - (4) Any member of the Council may put any relevant question to the deputation, but no member shall express an opinion upon, nor shall the Council discuss, the subject on which the deputation has been heard, until the deputation has withdrawn.

APPENDIX 2 : CURRENT SCHEME OF DELEGATION (DEVELOPMENT QUALITY)

The Director of Planning and Transportation has delegated authority for the following activities:

- 1 The determination of all applications for planning permission, for listed building consent, for conservation area consent and consent to display advertisements **EXCEPT** the following:
 - (a) all applications in respect of which a valid written objection is received within the timescales specified in notifications or press notices; and the application is recommended for approval. In the case of applications where the recommendation is for refusal, in line with the Development Plan, and objections have been received, these applications will be dealt with under delegated powers;*
 - (b) any application which a member, within two weeks of the publication of the appropriate weekly list, has requested in writing be submitted to the Development Quality Committee;
 - (c) all applications which are to be recommended for approval despite their being contrary to the Council's Local Plan policies or any guidelines adopted by the Council;
 - (d) all applications for large scale development, viz:
 - industrial developments over 10,000 square metres;
 - warehouse developments over 5,000 square metres;
 - retail and other commercial developments over 2,500 square metres;
 - housing developments over 20 units.
 - (e) all applications for the removal or amendment of conditions originally imposed at the specific request of members;
 - (f) all applications for Hazardous Substance Consent;
 - (g) and any others which in the Director of Planning and Transportation's view ought to be referred, notwithstanding there are no requests from members to refer it to the Committee.
- 2 Determining whether a proposal to vary the details of a planning permission is material and, if not, to determine the proposed variation, as provided by Section 64 of the 1997 Act, as amended.
- 3 Approving matters of detail which have been reserved when previously granting a conditional approval of a detailed planning application, eg details of landscaping.
- 4 To decline to determine repeat applications which fall within Section 39 of the Town and Country Planning (Scotland) Act 1997, as amended (following consultation with local members).
- 5 In consultation with the Depute Chief Executive (Support Services), entering into agreements under Section 75 of the Act following indication of approval of the related application for planning permission by the Development Quality Committee.

- 6 Granting of statutory permission to carry out work on trees or to remove trees included within a Tree Preservation Order or granting such permission in relation to trees within a conservation area or protected by planning conditions.
- 7 In consultation with the Depute Chief Executive (Support Services), the serving of a Building Preservation Notice or a Tree Preservation Order under Part VII of the 1997 Act, as amended, with the proviso that the serving of any such Order shall be reported as soon as practicable thereafter to the Committee.
- 8 In consultation with the Depute Chief Executive (Support Services), initiation of enforcement action or interdict action under Parts VI and/or XIV of the 1997 Act as amended, with the proviso that the Development Quality Committee shall be advised of any such action as soon as practicable thereafter.
- 9 The granting or otherwise of a Certificate of Lawfulness of Existing or Proposed Use or Development as provided under Sections 150 and 155 of the 1997 Act.
- 10 To authorise a person to enter upon any land at any reasonable time for the purposes mentioned in Sections 269 and 270 of the 1997 Act.
- 11 To determine prior notification applications relating to demolition and the erection or significant alteration or extension of agricultural and forestry building as provided for under Part 6 and Part 7 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended.
- 12 In consultation with the Depute Chief Executive (Support Services), the serving of an Amenity Notice under Section 1790 of the 1997 Act, as amended.

*Note: Irrespective of this clause it has become the established practice of the Development Quality Committee to consider all applications attracting one or more valid objections irrespective of the Director's recommendation.

APPENDIX 3 : PROPOSED INTERIM AMENDMENTS TO THE SCHEME OF DELEGATION (DEVELOPMENT QUALITY)

The Director of Planning and Transportation has delegated authority for the following activities:

2.1 Development Quality

- 1 The determination of all applications for planning permission, listed building consent, conservation area consent, consent to display advertisements, and applications for Certificates of Lawfulness of Existing or Proposed Use or Development, including the unconditional approval of applications, the approval of applications with conditions and the refusal of applications, **EXCEPT** the following categories of application:
 - (a) all applications in respect of which six or more valid written objections received within the timescales specified in statutory notifications or press notices; and the application is recommended for approval. In the case of applications where the recommendation is for refusal, in line with the Development Plan, and objections have been received, these applications will be dealt with under delegated powers (see Note 1 for definition);
 - (b) any application which a member, within two weeks of the publication of the appropriate weekly list, has requested in writing be submitted to the Development Quality Committee;
 - (c) all applications which attract a valid timeous objection from a statutory consultee and the application is recommended for approval (see note 2 for definition);
 - (d) all applications which are to be recommended for approval in circumstances where they are significantly contrary to the development plan (see Note 3 for definition);
 - (e) all applications for large scale development, viz:
 - industrial developments over 10,000 square metres;
 - warehouse developments over 5,000 square metres;
 - retail and other commercial developments over 2,500 square metres;
 - housing developments over 20 units;
 - EIA applications (see Note 4 for definition).
 - (f) all applications for the removal or amendment of conditions originally imposed at the specific request of members;
 - (g) all applications for Hazardous Substance Consent;
 - (h) and any others which in the Director of Planning and Transportation's view (following consultation with the Convenor) ought to be referred to the Committee;
 - (i) any application submitted by or on behalf of an Elected Member of the Council or an officer of the Council involved in the statutory planning process;
 - (j) applications made by the Council and applications relating to land in the ownership of the Council or in relation to land in which the Council has an interest;

- (k) applications which had been determined subject to a planning agreement (planning obligation) and which now formally require to be determined as a consequence of the Council and the applicant and interested parties to the agreement not being able to conclude the agreement within a reasonable period of time. This provision will apply in cases where the original decision was taken by Committee.
- 2 Determining whether a proposal to vary the details of a planning permission is material and, if not, to determine the proposed variation, as provided by Section 64 of the 1997 Act, as amended.
 - 3 Approving matters of detail which have been reserved when previously granting a conditional approval of a detailed planning application, eg details of landscaping.
 - 4 To decline to determine repeat applications which fall within Section 39 of the Town and Country Planning (Scotland) Act 1997, as amended (following consultation with local members).
 - 5 In consultation with the Depute Chief Executive (Support Services), entering into agreements under Section 75 of the Act following indication of approval of the related application for planning permission by the Development Quality Committee.
 - 6 Granting of statutory permission to carry out work on trees or to remove trees included within a Tree Preservation Order or granting such permission in relation to trees within a conservation area or protected by planning conditions.
 - 7 In consultation with the Depute Chief Executive (Support Services), the serving of a Building Preservation Notice under Sections 3 and 4 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended, or a Tree Preservation Order under Part VII of the 1997 Act, as amended, with the proviso that the serving of any such Order shall be reported as soon as practicable thereafter to the Committee.
 - 8 In consultation with the Depute Chief Executive (Support Services), initiation, progression and conclusion of enforcement action or interdict action under Parts VI and/or XIV of the Town and Country Planning (Scotland) Act 2006; or Chapter 4 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended, or Part VII of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 and related legislation. For the avoidance of doubt this delegated authority relates to:
 - Planning Contravention Notices;
 - Enforcement Notices;
 - Breach of Condition Notices;
 - Amenity Notices;
 - Stop Notices;
 - Hazardous Substances Contravention Notices;
 - Tree Replacement Notices;
 - Prosecution of the above as necessary and the giving of evidence in Court.

but EXCLUDES

- the taking of Direct Action under the terms of Section 135 of the 1997 Act.

- 9 The determination of instances where in the light of the provisions of the development plan and other material considerations it is expedient not to take enforcement action.
- 10 The granting or otherwise of a Certificate of Lawfulness of Existing or Proposed Use or Development as provided under Sections 150 and 155 of the 1997 Act.
- 11 To authorise a person to enter upon any land at any reasonable time for the purposes mentioned in Sections 156, 158, 160-163, 167, 172-177, 269 and 270 of the 1997 Act.
- 12 To determine prior notification applications relating to demolition and the erection or significant alteration or extension of agricultural and forestry building as provided for under Part 6 and Part 7 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended.

Note 1

For the purposes of this Interim Revised Scheme of Delegation a valid representation (letter or statement) shall require to meet the following criteria:

- a be in the form of a signed and dated letter or statement or an e-mail indicating the name and postal address of the sender **specifically indicating an objection to the application concerned**. The letter/statement shall bear a legible name of the signatory and the signatory's address;
- b be received by the Council no later than 21 calendar days from the date on which the application was declared as valid by the Council or no later than 21 calendar days of any subsequent Neighbour Notification, or in the case of applications which have the subject of statutory advertisement, no later than three calendar days following the expiry of the period specified in the advertisement;
- c where more than one letter/statement of representation per household is received this shall be defined as the Council having received one letter/statement;
- d where a letter or petition is received which is signed by more than one person, each signatory must provide a valid postal address, otherwise they will not be considered as a valid representation.
- e for the avoidance of doubt pre printed letters or cards which are not individually addressed and signed will not be entertained as valid and acknowledged as such. Photocopied standard template letters will be valid as long as they are signed and dated and bear the postal address of the sender;
- f to be valid a representation must contain matters which relate to the application involved and raise matters material in planning terms to the application concerned;
- g the content of invalid letters/statements will not be referred to in Director's reports and similarly non-material matters referred to in valid letters of representation will not be referred to or taken into account in the determination of the application;
- h the Director of Planning and Transportation shall, in cases of doubt, determine whether an objection or other representation is valid or timeous.

Note 2

For the purposes of this Interim Revised Scheme of Delegation a statutory consultee shall be taken to be consultees referred to in Article 15 of the Town and Country Planning

(General Development) Procedure (Scotland) Order 1992 as amended and will include a Community Council or officially recognised Neighbourhood Representative Structure.

Note 3

For the purposes of this Interim Revised Scheme of Delegation a proposed development is “significantly contrary to the development plan” if the departure concerned, in the judgement of the Director of Planning and Transportation, is directly related to the achievement of the core objectives of any element of the development plan and the approval of the application would seriously compromise the achievement of the development plan’s objectives and compromise its other policies and proposals. For the avoidance of doubt a proposal will not necessarily be significant if, for example, it fails to meet the terms on one or more policies or one or more of the criteria in any criteria based policy.

Note 4

An application which is determined by the Director of Planning and Transportation to be an application requiring the submission of an Environmental Impact Statement in terms of the Environmental Impact Assessment Regulations 1999, as amended.