

Report of the Strategic Director, Regeneration and Culture to the meeting of Governance and Audit Committee to be held on

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Subject:

Scheme of Delegation of Planning Decisions

Summary statement:

This report provides an explanation of the Scheme of Delegation used by the Regulatory & Appeals Committee and the two area planning panels and planning officers in the determination of planning applications.

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Portfolio:

Planning, Transport & Housing

Overview & Scrutiny Area:

Regeneration

1. SUMMARY

This report provides an explanation of the Scheme of Delegation used by the Regulatory & Appeals Committee and the two area planning panels and planning officers in the determination of planning applications. A report on the Review of the Planning Code of Conduct was considered by the Governance and Audit Committee on 10 January 2014 at that meeting Members requested that the Scheme of delegation be submitted to the Committee.

2. BACKGROUND

The latest version of the Scheme of Delegation was approved by the Regulatory & Appeals Committee at their meeting on 6th January 2011. Any amendments required to the Scheme would be reported to the Regulatory & Appeals Committee. There have not been any significant changes required to the Scheme since 2011. Although there have been some changes to planning regulations these have been minor.

3. OTHER CONSIDERATIONS

Not applicable.

4. OPTIONS

Members of the Committee can note the report and the current Scheme of Delegation. Members of the Committee can recommend changes for members of the Regulatory & Appeals Committee that they consider are needed to the Scheme.

5. FINANCIAL & RESOURCE APPRAISAL

None.

6. RISK MANAGEMENT AND GOVERNANCE ISSUES

Not applicable.

7. LEGAL APPRAISAL

None.

8. OTHER IMPLICATIONS

8.1 EQUALITY & DIVERSITY

Not applicable as report is for noting.

8.2 SUSTAINABILITY IMPLICATIONS

Not applicable.

8.3 GREENHOUSE GAS EMISSIONS IMPACTS

Not applicable.

8.4 COMMUNITY SAFETY IMPLICATIONS

Not applicable.

8.5 HUMAN RIGHTS ACT

Not applicable.

8.6 TRADE UNION

Not applicable.

8.7 WARD IMPLICATIONS

Not applicable.

8.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS (for reports to Area Committees only)

Not applicable.

9. NOT FOR PUBLICATION DOCUMENTS

None.

10. RECOMMENDATIONS

That Members note the report.

11. APPENDICES

Appendix 1: The Scheme of Delegation of Planning Decision 2011

12. BACKGROUND DOCUMENTS

None.

This scheme of delegation is made under the powers contained in Section 101 of the Local Government Act 1972, the Town and Country Planning Acts, Part 8 of the Anti-social Behaviour Act 2003, the Council's Constitution and all other enabling powers. It was approved by the Regulatory and Appeals Committee of the Council on 6 January 2011 and took effect on 7 January 2011

CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL

DEPARTMENT OF REGENERATION

Scheme of Delegation of Planning Decisions 2011

General Matters and Definitions

1. When making decisions in the exercise of the following delegated powers the relevant officers shall act in their own name.
2. When issuing formal determinations on behalf of the Council (e.g., grants or refusals of planning permission, certificates of lawfulness), relevant officers shall do so in the name of the Strategic Director Regeneration or the Assistant Director Planning.
3. Any decision taken in pursuance of this scheme must comply with:-
 - a) any statutory requirements with regard to the matters to be taken into consideration in making the decision;
 - b) The Council's Constitution;
 - c) The general principles of the Human Rights Act 1998;
 - d) The Members' Planning Code of Conduct;
 - e) Any other relevant protocols adopted by the Council from time to time.
4. In exercising these powers, officers shall have regard to any relevant policies or plans adopted by the Council, and shall have general regard to the desirability of referring any matter to the Area Planning Panel/Regulatory and Appeals Committee for decision. Officers shall at all times be entitled to decline to exercise any of the powers delegated by this scheme and to refer the matter to a higher level of decision making.

5. Officers shall accede to any request in writing or by electronic format made (unless the matter relates to an item where the Council has previously made a decision relating to an identical or substantially similar application in the previous 24 months) by a ward councillor for the application site or for the ward where the applicant resides specifying the material planning issue upon which the request for referral is founded; or pursuant to a resolution of the Council or of a committee or sub-committee, that an item be referred to the next level of decision making as set out in this Scheme of Delegation for to the appropriate Area Planning Panel/Regulatory and Appeals Committee.

For the avoidance of doubt, this provision does not apply with respect to applications made for Certificates of Lawfulness under D3 of this Scheme of Delegation, applications made for approval of discharge of planning conditions under A12 of this Scheme of Delegation, or applications made for non material amendments of planning applications under D10 of this Scheme of Delegation.

6. This scheme is additional to and without prejudice to the powers of the Strategic Director Regeneration or other relevant officer to make decisions under the general powers delegated to officers in the Council's Constitution.
7. For the avoidance of doubt no decision under this Scheme of Delegation shall be taken by any officer who has also written the relevant technical report for the item.
8. In this scheme of delegation an "application" includes all or any of the following:-
 - (i) an application for planning permission;
 - (ii) an application for listed building consent;
 - (iii) an application for conservation area consent;
 - (iv) an application for advertisement consent;
 - (v) an application for approval of reserved matters;
 - (vi) an application for the grant of hazardous substance consent;
 - (vii) an application to carry out works to trees protected by a tree preservation order.
9. "Planning permission" means approval of an outline or full application for planning permission (including change of use).
10. "Enforcement Action" means authorising the issuing of:-
 - (i) a breach of condition notice;
 - (ii) an enforcement notice;
 - (iii) a listed building enforcement notice;
 - (iv) a Section 215 notice (adverse affect on amenity);
 - (v) a tree replacement notice;

- (vi) a stop notice;
 - (vii) a temporary stop notice; or
 - (viii) proceedings for an injunction to restrain a breach or impending breach of planning or related control.
11. Decisions shall not be made by any officer under this scheme of delegation which relate to applications which are for or are likely to involve:-
- (i) a development which is for or includes the provision of 150 or more dwellings;
 - (ii) a development which is for or includes the provision of over 5000 square metres of office, commercial or retail development.
12. Where reference is made in this scheme to a statute or statutory instrument, that reference shall include any statute or statutory instrument revoking and re-enacting the original statute or statutory instrument with or without modification.
13. For the avoidance of doubt any development which is EIA development as defined in the Town and Country Planning (Environmental Impact etc) Regulations 1999 shall be determined under Part E of this scheme.

The following powers to act on behalf of the Council as local planning authority are delegated.

PART A

Delegation to Senior Planner (Minerals and Waste)

Other than the power under A13 below, the following powers to determine an application and make other determinations shall be exercised under this part provided no written representations including any petition objecting to the proposal have been received,

A1 Non-residential Extensions

Construction of small scale extensions or additions to existing agricultural, industrial, retail, other commercial and community buildings.

A2 External Alterations

External alterations to all unlisted buildings, including new shop fronts, security measures (e.g. shutters/grilles), flues/ducts and satellite dishes.

A3 Listed Buildings

Minor external and minor internal alterations to grade II listed buildings, including new shop fronts and security measures.

A4 Construction of vehicle accesses including dropped crossings

A5 Septic tanks and soakaways

A6 11kv overhead power lines

A7 Minor Regulation 3 and 4 applications

Power to determine planning applications under Regulations 3 and 4 of the Town and Country Planning General Regulations 1992 where the development proposed by departments other than Transportation, Design and Planning is of an ancillary nature to existing Council property (for example, the provision of a garage for a caretaker at a school, a temporary classroom, a greenhouse, the laying out of playgrounds or playing fields, satellite dishes but excluding material changes of use).

A8 Prior Approvals under the General Permitted Development Order 1995 (“the GPDO”) – agricultural and forestry

Power to make a determination under the GPDO as to whether the prior approval of the Council is required for the siting, design, means of construction or external appearance of any works on agricultural or forestry land proposed to be carried out by authority of the GPDO.

Power also, where it is determined that prior approval is necessary, to formally approve or otherwise such details as may be submitted pursuant to the requirements of the GPDO.

A9 Prior Approvals under the GPDO – other

Power to make a determination under the GPDO as to whether the prior approval of the Council is required with respect to the exercise of permitted development rights by or with respect to:-

- a) telecommunications code system operators where the case officer recommendation is that prior approval is required and should be refused;
- b) public gas suppliers and electricity undertakings;
- c) development under local acts or orders;
- d) toll road facilities;
- e) the demolition of buildings or other structures.

Power also, where it is determined that prior approval is necessary, to formally approve or otherwise such details as may be submitted pursuant to the requirements of the GPDO (excluding those applications described in a) above).

A10 Tree Preservation Orders etc

Power to authorise the making and confirmation of Tree Preservation Orders.

Power to determine applications for works on trees protected by Tree Preservation Orders and to impose appropriate conditions on any consent.

Power to decide to take no further action where notice of intent for works to a tree in a conservation area has been received.

Power to determine matters relating to the Hedgerows Regulations 1997.

A11 Conditions

Power to give written confirmation of the discharge of planning conditions.

Power to approve schemes and other such matters required to be submitted by a planning condition.

A12 Planning Contravention Notices etc

Power to issue a Planning Contravention Notice under Section 171C of the Town and Country Planning Act 1990.

Power to issue a requisition for information under section 330 of the Town and Country Planning Act 1990.

PART B

Senior Enforcement Officers

B1 Power to determine that no further action be taken in a complaint about a matter which could have been the subject of Enforcement Action where:-

- (a) it is considered that the matter complained of has not occurred, or
- (b) that the matter complained of is not a breach of planning control, or does not otherwise fall within the statutory powers relating to Enforcement Action.

B2 Power to determine whether development constitutes permitted development under the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and Planning (Listed Buildings Conservation Areas) Act 1990.

- B3 Power to determine whether an advertisement has deemed consent to be displayed under the provisions of the Town and Country Planning (Control of Advertisement) (England) Regulations 2007.
- B4 Power to agree the detailed terms of any notice defined in General Matters and Definitions paragraph 10(i)-(v) previously authorised under paragraph D7 below or by the appropriate Area Planning Panel/Regulatory and Appeals Committee.
- B5 Planning Contravention Notices etc
- Power to issue a Planning Contravention Notice under Section 171C of the Town and Country Planning Act 1990.
- Power to issue a requisition for information under section 330 of the Town and Country Planning Act 1990.
- B6 Closing enforcement cases
- Power to close an enforcement case or investigation into breaches of planning control where no significant matters remain outstanding or where, having consulted with the relevant Area Planning Panel or Regulatory and Appeals Committee chair, it is not considered expedient to take enforcement action with the exception of those matters referred to the respective Area Planning Panel and to the Regulatory and Appeals Committee for a decision.
- Exercise of this power is subject to the requirement that where an officer proposes to make a decision that it is not expedient to take enforcement action with regard to a breach of planning control they shall accede to any request in writing or by electronic format from a Ward Councillor (received prior to a formal decision having been made) for the matter to be referred to the Area Planning Panel (or the Regulatory and Appeals Committee if appropriate) for a decision.
- Any decision by an officer made under this power shall be reported to the appropriate Area Planning Panel/Regulatory and Appeals Committee for information.

PART C

Senior Planning Officers (Development Management and Design and Conservation) and Development Project Leaders Major Development Team

The following powers to determine an application and make other determinations shall be exercised under this part provided no written representations objecting to the proposal have been received:-

- from a Member of Council;
- from a Member of Parliament;

- where representations have been received either from 6 or more individuals or in the form of a petition signed by 6 or more individuals (where each individual appears to be from a separate address) which are contrary to the recommendation of the relevant case officer.

C1 All the powers under Part A and Part B above.

C2 Residential Extensions

Residential development within the curtilage of a dwelling house, except proposals to create a separate dwelling or a free standing residential annex within that curtilage.

C3 Change of Dwelling Type

Change of dwelling type on an approved residential scheme including where the residential element is part of an approved mixed-use scheme.

C4 Domestic Garages

Construction of a garage used for domestic purposes on land outside a residential curtilage, such as on garage “colonies”.

C5 Non-residential sites

Construction of any agricultural, industrial, retail, other commercial or community buildings, including extensions to existing buildings, up to 1000 square metres of gross floor space, on a site which does not exceed 1000 square metres in area.

C6 Construction of up to 9 dwellings

Developments which provide up to 9 dwellings (excluding proposals within the green belt except where it is proposed to refuse the application).

C7 Reserved Matters

All reserved matters applications where siting and means of access have been previously approved except where, with respect to any particular application, this power has been reserved by the appropriate Area Planning Panel/Regulatory and Appeals Committee.

C8 Changes of use

All changes of use, including those where elements of new build and any material alterations to the building are included, subject, where residential units are being created, to a maximum of 9 dwelling units.

- C9 Listed Buildings (Grade II)
All external and internal alterations to grade II listed buildings.
- C10 Listed Buildings (Grade 1 and Grade II*)
Minor external and minor internal alterations to Grade 1 and Grade II* listed buildings.
- C11 All advertisement consent applications.
- C12 Postal pouch boxes
- C13 Single agricultural buildings
- C14 Hazardous substances
All hazardous substance consents where the presence of hazardous substances is not likely to have significant effects on the immediate locality.
- C15 Mineral planning consents
Power to determine applications under the Environment Act 1995 for the review of mineral planning consents and new conditions in respect thereto.
- C16 Minerals, waste management, waste treatment and waste disposal proposals etc
Power to determine applications for plant, machinery and buildings (where the gross floor space of the area upon which the plant or machinery is to be sited or of the building does not exceed 1000 sq metres) on operational waste management facilities (including facilities for the deposit treatment or storage of waste), mineral extraction or land reclamation sites or in respect of such sites where planning permission has been granted for such activities but the development has not yet been begun.
Power to determine applications for waste management facilities including facilities for the deposit treatment or storage of waste), where the gross floor area of the application site does not exceed 1000 sq metres, the proposed throughput does not exceed 50000 tonnes per annum and the waste is not municipal, hazardous, commercial or industrial waste.
- C17 Variation etc of Conditions
Power to determine applications under Section 73 of the Town and Country Planning Act 1990 for the modification, variation or deletion of planning conditions.

C18 Submission of Assessments

Power to determine on behalf of the Council that applicants for planning permission be required to submit or as the case may be not to submit Environmental Impact Assessments (by way of a screening opinion), Transport Assessments, Retail Impact Assessments and site investigation reports into contaminated land, prior to determination of relevant applications.

C19 High hedges complaints

Power to determine not to proceed with a complaint made under Part 8 of the Anti-social Behaviour Act 2003 where:

- (a) the complaint does not meet the relevant valid legal tests; or
- (b) the complainant has not taken all reasonable steps to resolve the matters complained of without involving the Council; or
- (c) the complaint is frivolous or vexatious.

C20 Power to determine applications for Certificates of Lawfulness of Proposed Development for householder and other minor development.

PART D

Delegation to Major Development Manager, Planning Casework Managers (Development Management), Planning Manager (Enforcement and Trees), Planning Manager (Minerals and Waste) and Team Leader Design and Conservation

D1 All the powers under Parts A , B and C above but without the restrictions imposed by the recitals to those Parts, together with the following powers.

D2 General

Subject only to the need to have regard to the impact, sensitivity and possible controversial nature of any proposal and the corresponding need where this applies to refer the matter to the appropriate Area Planning Panel/Regulatory and Appeals Committee power, and to article 11 of General Matters and Definitions above, to make decisions on behalf of the Council on all planning matters that are under the Council's Constitution the responsibility of the Area Planning Panels and the Regulatory and Appeals Committee. This includes the power to determine applications made on behalf of the Council under Regulations 3 and 4 of the Town and Country Planning General Regulations 1992.

D3 Lawful Development Certificates

Power to determine applications made for Certificates of Lawfulness of Existing Use or Development of land or buildings.

Power to determine applications made for Certificates of Lawfulness of Proposed Use or Development of land or buildings.

D4(a) Planning obligations and Section 278 agreements - Authorised by Panel or Committee

After receiving general authorisation from the appropriate Area Planning Panel, the Regulatory and Appeals Committee or Council (and subject to consulting with the Legal and Democratic Services Director on content and drafting), the power to approve the detailed provisions of any planning obligations under Section 106 or 106A of the Town and Country Planning Act 1990 and related agreements under Section 278 of the Highways Act 1980, or similar such enabling powers.

D4(b) Planning obligations and Section 278 agreements - Authorised by Officers

Power to authorise the entering into, modification or variation of, and the acceptance of, planning obligations, including (subject to consulting with the Legal and Democratic Services Director on content and drafting) approving the detailed provisions of such documents under Section 106 or 106A of the Town and Country Planning Act 1990 and related agreements under Section 278 of the Highways Act 1980, or similar such enabling powers.

D5 Discharge of Planning Obligations

Power to certify the discharge of any planning obligations entered into under Section 106 or 106A of the Town and Country Planning Act 1990 and related agreements under Section 278 of the Highways Act 1980, or similar such enabling powers.

D6 Enforcement Action (excluding Stop Notices and Injunctions)

Power to authorise Enforcement Action as defined in General Matters and Definitions paragraph 10(i)-(v) only, where the breach of planning control relates to development which, had an application been made for such development, it could have been determined under delegated powers in Part A or C or this Part of this scheme. In all cases regard shall be given to the seriousness, magnitude and effect of the breach.

In authorising Enforcement Action the relevant officer must ensure that:-

- (i) a written report is prepared and submitted detailing the alleged breach of control, the planning history and the material planning considerations; and
- (ii) a formal minute of the decision is prepared and signed detailing the alleged breach, the steps required to remedy the breach, the time limit for compliance and the reasons why it is expedient for a notice to be issued/served.

Any enforcement Action authorised under this power shall be reported to the appropriate Area Planning Panel/Regulatory and Appeals Committee for information.

D7 Enforcement Action (content of notice)

Power to agree the detailed terms of any notice defined in General Matters and Definitions paragraph 10(i)-(v) previously authorised under paragraph D6 above or by the appropriate Area Planning Panel/Regulatory and Appeals Committee.

D8 High hedge remedial notice etc

Power to determine whether a high hedge affects the complainant's reasonable use of their property, and if so, what action should be taken to remedy the problems caused by the high hedge and to prevent them from recurring.

Power to issue a remedial notice under Part 8 of the Anti-social Behaviour Act 2003.

D9 Prosecutions

Power to authorise prosecution proceedings for non-compliance with any of the following:-

- a) an enforcement notice;
- b) a breach of condition notice;
- c) a planning contravention notice;
- d) a listed building enforcement notice;
- e) an advertisement discontinuance notice;
- f) a section 215 notice (adverse affect on amenity);
- g) a tree replacement notice;
- (h) a stop notice or a temporary stop notice;
- (i) a remediation notice under part 8 of the Anti-social Behaviour Act 2003;
- (j) a section 330 notice; or
- (k) any other offences committed under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 or the Planning (Hazardous Substances) Act 1990.

D10 Non-Material Amendments to Planning Permissions

Power to determine non-material amendments to planning applications in accordance with Section 96A of the Town and Country Planning Act 1990.

PART E

Delegation to the Strategic Director Regeneration, Assistant Director Planning, Development Manager, Planning and Support Manager, Strategy Manager and Design and Countryside Manager

- E1 All the powers under Parts A, B, C and D but without the restrictions imposed by the recitals to those Parts, together with the following powers.
- E2 General
- Power to make decisions on behalf of the Council on all planning matters that are under the Council's Constitution the responsibility of the Area Planning Panels and the Regulatory and Appeals Committee (subject to article 11 of General Matters and Definitions above).
- E3 All Enforcement Action (including stop notices, temporary stop notices and injunctions).
- Power to decide to take any Enforcement Action as defined in General Matters and Definitions Paragraph 10, including agreeing the detailed terms of any notice subject to the same provisos as set out under D6 above.
- Where a stop notice is proposed, the power to determine any special reasons justifying the shortening of the time period by when the Stop Notice takes effect (to be recorded in writing), and in all cases before use of the power to carry out a cost/benefit analysis as to why a stop notice should be issued.
- Power to determine that proceedings be begun to obtain an Injunction to restrain any actual or apprehended breach of planning control.
- Any Enforcement Action authorised under this power shall be reported to the appropriate Area Planning Panel/Regulatory and Appeals Committee for information.
- E4 Power to determine applications for EIA development as defined in the Town and Country Planning (Environmental Impact etc) Regulations 1999.

PART F

Delegation to the Principal Environmental Services Manager, the Principal Health Protection Manager and the Head of Service (Environmental Protection)

- F1 Section 215 Notices
- Power to issue a notice under Section 215 of the Town and Country Planning Act 1990 following consultation with the relevant Area Planning Manager and to agree the detailed terms of any such notice.

Power to determine to take the steps required by a section 215 notice where the recipient has failed to comply with it, and to recover the costs of taking such steps from the owner of the land.

Power to authorise prosecution proceedings for non-compliance with the terms of a section 215 notice.

Provided that any decision to issue a Section 215 notice or prosecution authorised under this power shall be reported to the appropriate Area Planning Panel/Regulatory and Appeals Committee for information.