



PROPOSED REVISION OF THE COUNCIL'S SCHEME OF DELEGATION FOR THE DETERMINATION OF PLANNING APPLICATIONS

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report advises Members of the Council's scheme of delegation with regard the determination of planning applications and seeks Committee approval for an amended scheme of delegation for planning matters, under which specific types of planning applications are delegated to the appointed officer to determine.
- 1.2 Following a Planning Service Review the Development Management and Planning Policy and Environment teams have been conjoined into a single Planning team with a new structure being implemented from March 2016. As part of the new structure, roles and responsibilities and associated job titles have changed. As a consequence the approved scheme of delegation needs to be updated to identify the correct appointed officers who are delegated to determine applications.
- 1.3 The proposed updating of the scheme of delegation does not change which applications Elected Members delegate to officers to determine.
- 1.4 Additional minor amendments are also proposed to improve the clarity of the scheme for applicants and other interested parties.

2 BACKGROUND

- 2.1 Planning authorities use powers of delegation so that certain decisions can be taken by officials instead of being considered by Elected Members. Delegation to officials is an important means of adding efficiency to administrative processes and the Scottish Government wants to encourage an appropriate level of delegation to officials to support the role of the planning system in increasing sustainable economic growth.
- 2.2 The current scheme of delegation for the determination of planning applications was agreed by the Council at its meeting of 24 September 2013 and referred to the Scottish Ministers' for approval. This approval was subsequently granted and is in accordance with The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (*hereafter referred to as the regulations*). The regulations came into effect on 30 June 2013.
- 2.2 The regulations require the planning authority to prepare a scheme of delegation at intervals of no greater than every five years.

3 PROCEDURES

- 3.1 Prior to the adoption of an amended scheme, the scheme must be approved by the Scottish Ministers.
- 3.2 The proposed amendment to the scheme of delegation does not affect the procedure where a Member can 'call in' an application in their Ward to be determined by the Committee within a month of an application being validated or within 5 working days of an application being circulated prior to determination under the 'Information to Members' procedure outlined in Appendix 2 of the scheme.
- 3.3 The proposed revised scheme showing proposed amendments is attached as Appendix A. If ultimately approved by the Scottish Ministers, there may need to be consequential amendments to the Council's Standing Orders and Scheme of Administration for approval by Council.

4 RECOMMENDATION

- 4.1 It is recommended that Committee:
 - i) approves the amended 'Revised Scheme of Delegation for the Determination of Planning Applications for Planning Permission' as set out at Appendix A of this report; and
 - ii) agrees that this amended 'Revised Scheme' be formally submitted to Scottish Ministers for approval.

Ian Johnson
Head of Communities and Economy

Date: 8 August 2017
Contact Person: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310

Background Papers: a) the Town and Country Planning (Scotland) Act 1997 as amended b) Planning Etc. (Scotland) Act 2006, and c) Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

Scheme of Delegation for the Determination of Applications for Planning Permission: Prepared in Accordance with the Provisions of the Planning Etc. (Scotland) Act 2006 and The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

Part A.

The following applications for planning permission shall be determined by the Planning Committee of the Council:

- i. any application for planning permission in principle (PPP) and for detailed planning permission (DPP) which comprises a 'National Development' or a 'Major Development' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 [\(or any subsequent or replacement regulations\)](#);

A copy of the schedule in those Regulations which lists those developments which are classed as major comprises the Appendix to this scheme of delegation.

- ii. any application that the appointed officer is minded to approve under the terms of this scheme of delegation but which is the subject of an extant objection from a statutory consultee that would result in referral of the application to Scottish Ministers under the provisions of Circular 3/2009, Notification of Planning Applications [\(or any subsequent or replacement guidance with regard the notification of planning applications\)](#);
- iii. any application that the appointed officer is minded to approve under the terms of this scheme of delegation but which would constitute a significant departure from the provision of the Council's Development Plan; and
- iv. any application which would normally be determined by the appointed officer under the terms of this scheme of delegation but which has been the subject of notification that it is to be determined by the Planning Committee of the Council: such notification to be made in writing within one month of the date of validation of the application (except where the provisions of Annex 2 apply) and to be known as 'Notification of Member Referral': such notification shall only be valid if submitted by a Member in whose Ward the application site lies in whole or in part, and includes a statement of the reasons in planning terms for the notification.

Part B.

The following applications for planning permission shall be delegated for determination by the appointed officer of the Council. The appointed officer of the Council is the officer appointed in terms of Section 17 of the Planning etc (Scotland) Act 2006 (Section 43A (1) of the Town and Country Planning (Scotland) Act 1997), as a person holding the position of Director Education, Communities and Economy, Head of Communities & Economy, Planning and Development, Development Management Manager, Principal Planning Officer or Senior Planning Officer Planning Manager, Lead Officer Local Developments, Lead Officer Major Applications and Enforcement, Lead Officer Planning Obligations, Lead Officer Conservation and Environment and Lead Officer Development Plans.

- i. any application which does not fall within any of the categories comprising Part A of this scheme of delegation;
- ii. any application for development not defined as a 'Local Major Development' in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (or any subsequent or replacement regulations);
- iii. any application to vary or amend a condition on an extant planning permission; and
- iv. any application to vary an extant planning permission.

SCHEDULE OF MAJOR DEVELOPMENTS

*Description of Development**Threshold or criterion***1. Schedule 1 development**

Development of a description mentioned in Schedule 1 to the Environmental Impact Assessment (Scotland) Regulations 1999 (3) (other than exempt development within the meaning of those Regulations).

All Development.

2. Housing

Construction of buildings, structures or erections for use as residential accommodation.

(a) The development comprises 50 or more dwellings; or
(b) The area of the site is or exceeds 2 hectares.

3. Business & General Industry, Storage and Distribution

Construction of a building, structure or other erection for use for any of the following purposes-

- (a) as an office;
- (b) for research and development of products or processes;
- (c) for any industrial process; or
- (d) for use for storage or as a distribution centre.

(a) The gross floor space of the building, structure or other erection is or exceeds 10,000 square metres; or

(b) The area of the site is or exceeds 2 hectares.

4. Electricity Generation

Construction of an electricity generating station.

The capacity of the generating station is or exceeds 20 megawatts.

5. Waste Management Facilities

Construction of facilities for use for the purpose of waste management or disposal.

The capacity of the facility is or exceeds 25,000 tonnes per annum.

In relation to facilities for use for the purpose of sludge treatment, a capacity to treat more than 50 tonnes (wet weight) per day of residual sludge.

6. Transport and Infrastructure Projects

Construction of new or replacement roads, railways, tramways, waterways, aqueducts or pipelines.

The length of the road, railway, tramway waterway, aqueduct or pipeline exceeds 8 kilometres.

7. Fish Farming

The placing or assembly of equipment for the purpose of fish farming within the meaning of section 26(6) of the Act.

The surface of water covered is or exceeds 2 hectares.

8. Minerals

Extraction of minerals

The area of the site is or exceeds 2 hectares

9. Other Developments

Any development not falling wholly within any single class of development described in paragraphs 1 to 8 above

(a) The gross floor space of any building, structure or erection constructed as a result of such development is or exceeds 5,000 square metres; or
(b) The area of the site is or exceeds 2 hectare

Annex 1: Decisions and Determinations on Other Matters

The Planning Committee shall be required to consider and determine:-

- i) the making of a Tree Preservation Order;
- ii) confirmation of a Provisional Tree Preservation Order; and
- iii) the formal reporting of planning enforcement matters to the Procurator Fiscal.

The following matters are delegated to the appointed officer:-

- i) the serving of a Provisional Tree Preservation Order;
- ii) the investigation of formal planning enforcement proceedings through the issuing of enforcement notices, stop notices, temporary stop notices, fixed penalty notices, planning contravention notices and Section 179 (amenity) notices;
- iii) determination of any application for a certificate of lawful development;
- iv) determination of any application for listed building consent;
- v) determination of any application for conservation area consent;
- vi) determination of any application for [express](#) advertisement consent;
- vii) determination of any application to carry out works to trees;
- viii) [discharge and modifications to Planning Obligations;](#)
- ix) [applications made under Section 42 of the Town and Country Planning \(Scotland\) Act 1997 as amended;](#)
- x) [Environmental Impact Assessment \(EIA\) Screening and Scoping requests;](#)
- xi) [applications/consents made under Section 36 and 37 of the Electricity Act 1989;](#)
- xii) [Matters Specified in Conditions applications;](#)
- xiii) [Planning Certificate applications made under Section 50 of the Licensing \(Scotland\) Act 2005;](#)
- xiv) [determination of prior notification applications;](#)
- xv) [determination of non material variations to applications; and](#)
- xvi) [the discharge of planning conditions](#)

Annex 2: Information to Members

Applications for planning permission which fall to be determined under Part B of the Scheme of Delegation (i.e. are delegated for determination by officers), and to which any of the following criteria are relevant will be drawn to the attention of Members:-

- i) the application has attracted ten or more written objections from individual households or other premises; or
- ii) the application is the subject of formal written objection from a community council within whose area the application site lies either in whole or in part; or
- iii) the application seeks to vary a planning permission originally granted by the Planning Committee; or
- iv) where the appointed officer recommends that the application be approved the application can only be approved subject to the requirement for a legal planning obligation agreement.

Information will be provided to all Members no later than five working days prior to the date of formal determination, thereby providing the opportunity for a local Ward Member to consider submission of a formal 'Notification of Member Referral' in accordance with Part A viiiiv) of the Scheme of Delegation. For the avoidance of doubt the time limit period for notification specified in Part A viiiiv) will not apply in cases notified under the provisions of this Annex.

Local Ward Members will be informed of any formal planning enforcement proceedings which have been undertaken within their respective Wards: such proceedings being the issuing of an Enforcement Notice, a Stop Notice, a Temporary Stop Notice, a Breach of Condition Notice, a Fixed Penalty Notice or a Section 179 (amenity) Notice.

Unless otherwise specified all communications to Members under the terms of this Annex shall be by email.

Annex 3: Representations Received on Planning Applications

A representation on a planning application shall only be competent if it comprises a written submission in the form of either a letter or an e-mail. In the case of a letter the correspondent will require to include their name, full address and signature. In the case of an e-mail a name and full address will be required.

~~Any representations which may be received after the following dates will not be taken into account in the assessment and determination of planning applications:-~~

- ~~i. In the case of planning applications which are to be reported to the Planning Committee, 5.00 p.m. on the Monday of the week preceding the meeting of the Committee; where that day is a public holiday then the deadline will be 5.00 p.m. on the immediate preceding working day. This deadline also applies where the Committee defers determination of an application to a later date.~~
- ~~ii. In the case of applications due for approval under delegated powers subject to a legal agreement, the day that notice is given to Members advising that the application is to be approved subject to the signing of a legal agreement.~~

Planning applications are determined in accordance with the Town and Country Planning (Scotland) Act 1997 as amended (*hereafter referred to as the Act*) and associated regulations and Scottish Government advice in particular the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (*hereafter referred to as the Regulations*).

The Act requires the planning authority to “take into account any representations relating to that application which are received by them before the expiry of any period prescribed” by the Act and Regulations (21 days for notifications and 14 days for consultations). Furthermore, the Act states “no such application shall be determined until after the expiry of any period which may be so prescribed”. (*The notification and consultation requirements vary for listed building consent applications, advertisement consent applications and applications to modify or discharge a planning obligation*).

It is Midlothian’s practice to consider any representations received prior to the final drafting of an applications ‘report of handling’ which is either the Committee report or the delegated officer’s report which sets out the planning assessment of the application. This in effect means that representations received after the prescribed period are considered if the officer’s assessment of the application has not been concluded. Representations received after the publication of the Committee agenda, but before the meeting of the Committee, are assessed and if appropriate the Committee are verbally updated at the meeting. The Committee (the decision maker) has the discretion to decide if they wish to consider ‘late’ representations received after the prescribed period. It is expected that it will wish to do so where the representation is material and could affect the planning assessment of the application. This would be consistent with the planning authority’s statutory duty to take into account all considerations which are both material and relevant to the application known at the time. In

exceptional circumstances, this may mean that officers recommend that an application be deferred to a future meeting pending further detailed assessment. If deadlines for the submission of late representations are strictly adhered to there is a risk that the planning authority would be failing in its duty to consider all relevant material considerations.