

REPORT TO: East Lothian Council

MEETING DATE: 25 June 2013

BY: Executive Director (Services for Communities)

SUBJECT: Change to Scheme of Delegation for Planning Applications

1 PURPOSE

- 1.1 To seek approval from Members of a proposed amended Scheme of Delegation for determination of planning applications, to be submitted to Scottish Ministers for their approval.

2 RECOMMENDATIONS

- 2.1 Members are asked to approve the proposed amended Scheme of Delegation for determination of planning applications, in terms set out in Appendix 2 to this report, and authorise officers to submit this proposed Scheme to Scottish Ministers for approval.

3 BACKGROUND

- 3.1 In terms of the Town and Country Planning (Scotland) Act 1997, as amended, the Council, as planning authority, is required to develop a Scheme of Delegation for determination of planning applications. This Scheme of Delegation is to be reviewed at intervals of not more than five years and any new or amended Scheme must be submitted to Scottish Ministers for approval prior to being adopted by the Council. The current Scheme of Delegation was adopted by the Council in August 2009 and is attached as Appendix 1 to this report.
- 3.2 At the time the current Scheme of Delegation was adopted by the Council, it was a statutory requirement that any planning applications made by the planning authority, by a member of the planning authority or where the planning authority had an ownership or financial interest in the land that was the subject of the planning application, could not be delegated to officers for a decision and had to be determined by the Planning Committee. This is reflected in the current Scheme of Delegation. By virtue of recent amendment to the Town and Country

Planning (Schemes of Delegation and Local Review Body Procedure) (Scotland) Regulations 2013, this prohibition on delegation of such decisions has been removed.

- 3.3 In the interests of efficient and effective decision making, it is now proposed to reflect this relaxation of the restrictions on delegated decision making by amending the Scheme of Delegation to remove the categories of applications referred to in paragraph 3.2 from those applications that must be determined by the Planning Committee. Applications of these types will now be dealt with under the Scheme of Delegation List and it will still be possible for Members to refer these to the Planning Committee where they raise important planning issues or where there is any public objection to the proposal.
- 3.4 In addition, to comply with the statutory requirement to review the Scheme of Delegation at intervals of not less than five years, the Scheme generally has been reviewed. The only other amendment proposed is to reflect the Service Manager, Development Management, as the delegated officer for the making and issuing of planning decisions following the restructure of Chief Officers and the retirement of the former Executive Director of Environment in 2012. The proposed amended Scheme of Delegation is attached to this report as Appendix 2. The 2013 Regulations require Scottish Ministers to approve any Scheme of Delegation prior to it being adopted by a planning authority. It is proposed that the amended Scheme of Delegation appended hereto will be submitted to Scottish Ministers for approval. When this is obtained, the Scheme will be brought back to Council for adoption and a consequential amendment to Standing Orders to incorporate the amended Scheme of Delegation.

4 POLICY IMPLICATIONS

- 4.1 Removing these categories of planning applications from the requirement to be determined at a meeting of the Planning Committee will assist in efficient and effective decision making without compromising the transparency of the decision making process.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None
- 6.2 Personnel - None

6.3 Other - None

7 BACKGROUND PAPERS

7.1 Current Scheme of Delegation for Determination of Planning Applications (Appendix 1)

7.2 Proposed Amended Scheme of Delegation for Determination of Planning Applications (Appendix 2)

AUTHOR'S NAME	Iain McFarlane
DESIGNATION	Acting Development Management Manager
CONTACT INFO	Ext 7292 imcfarlane@eastlothian.gov.uk
DATE	3 June 2013

Appendix 1 – Current Scheme of Delegation

DELEGATION OF AUTHORITY TO THE EXECUTIVE DIRECTOR OF ENVIRONMENT IN RELATION TO DETERMINATION OF PLANNING APPLICATIONS

1. Decisions in relation to planning applications

a. Delegated Decisions - 'Local Developments' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008, except for: -

- (i) Applications made by the planning authority;
- (ii) Applications made by a member of the planning authority; or
- (iii) Applications where the planning authority has an ownership or financial interest in the land that is the subject of the application:

shall be determined by the Executive Director of Environment without reference to Members, subject to 1(b) below. Such determination shall include, where appropriate, authority for the Council to enter into any legal agreement in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 or otherwise and authority for the Council to take enforcement action in instances where retrospective planning permission is refused for unauthorised development.

b. Scheme of Delegation List - A list of reports on applications to be decided under delegated authority in terms of 1(a) above which raise important planning issues and/or are subject to any amount of public objection shall be circulated each week to Members, who then shall have seven days in which to request referral to the Planning Committee, otherwise the officer decision shall be issued by the Executive Director of Environment in terms of 1(a) above. The Member who has requested referral to the Planning Committee shall prepare the Statement of Reasons for issue by the Planning Authority giving the reasons why the Planning Committee and not the Executive Director, should determine the application.

c. Reports to the Planning Committee – the following applications shall be reported to and determined by the Planning Committee:

- (i) Applications for 'National Developments' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008
- (ii) Applications for 'Major Developments' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008
- (iii) Applications for 'Local Developments' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008 where:
 - the application is made by the planning authority, or
 - the application is made by a member of the planning authority, or

- where the planning authority has an ownership or financial interest in the land that is the subject of the application.
- (iv) Applications referred by a Member or Members of the planning authority in terms of 1(b) above.

2. Decisions in relation to enforcement of planning control

- a. Authority for service of Planning Contravention Notices and Breach of Condition Notices will be delegated to the Executive Director of Environment and will be reported for Members' information to the Members' Library.
- b. Committee Expedited List – reports recommending service of Enforcement Notices, Stop Notices and Notices under Section 179 (“Land Adversely Affecting Amenity of Neighbourhood”) of the Town and Country Planning (Scotland) Act 1997 shall be circulated each week to Members, who then shall have seven days in which to request referral to the Planning Committee, otherwise the officer recommendation is deemed to be accepted and the Executive Director of Environment shall be authorised to proceed on that basis.
- c. Reports to the Planning Committee – Notices, as set out in 2(b) above, referred by Members from the Committee Expedited List.

3. Decisions in relation to the variation, modification or discharging of planning obligations

- a. Authority to determine applications to vary, modify or discharge planning obligations, in terms of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010
- b. Authority to determine applications to vary modify or discharge Good Neighbour Agreements, in terms of the Town and Country Planning (Modification and Discharge of Good Neighbour Agreements) (Scotland) Regulations 2010.

Appendix 2 – Proposed Amended Scheme of Delegation

DELEGATION OF AUTHORITY TO THE SERVICE MANAGER, DEVELOPMENT MANAGEMENT IN RELATION TO DETERMINATION OF PLANNING APPLICATIONS

1. Decisions in relation to planning applications

- a. Delegated Decisions - 'Local Developments' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008 shall be determined by the Development Management Manager without reference to Members, subject to 1(b) below. Such determination shall include, where appropriate, authority for the Council to enter into any legal agreement in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 or otherwise and authority for the Council to take enforcement action in instances where retrospective planning permission is refused for unauthorised development.
- b. Scheme of Delegation List - A list of reports on applications to be decided under delegated authority in terms of 1(a) above which raise important planning issues and/or are subject to any amount of public objection shall be circulated each week to Members, who then shall have seven days in which to request referral to the Planning Committee, otherwise the officer decision shall be issued by the Service Manager, Development Management in terms of 1(a) above. The Member who has requested referral to the Planning Committee shall prepare the Statement of Reasons for issue by the Planning Authority giving the reasons why the Planning Committee and not the Service Manager, Development Management, should determine the application.
- c. Reports to the Planning Committee – the following applications shall be reported to and determined by the Planning Committee:
 - (i) Applications for 'National Developments' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008;
 - (ii) Applications for 'Major Developments' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008; and
 - (iii) Applications referred by a Member or Members of the planning authority in terms of 1(b) above.

2. Decisions in relation to enforcement of planning control

- a. Authority for service of Planning Contravention Notices and Breach of Condition Notices will be delegated to the Service Manager,

Development Management and will be reported for Members' information to the Members' Library.

- b. Committee Expedited List – reports recommending service of Enforcement Notices, Stop Notices and Notices under Section 179 (“Land Adversely Affecting Amenity of Neighbourhood”) of the Town and Country Planning (Scotland) Act 1997 shall be circulated each week to Members, who then shall have seven days in which to request referral to the Planning Committee, otherwise the officer recommendation is deemed to be accepted and the Service Manager, Development Management shall be authorised to proceed on that basis.
- c. Reports to the Planning Committee – Notices, as set out in 2(b) above, referred by Members from the Committee Expedited List.

3. Decisions in relation to the variation, modification or discharging of planning obligations

- a. Authority to determine applications to vary, modify or discharge planning obligations, in terms of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010
- b. Authority to determine applications to vary modify or discharge Good Neighbour Agreements, in terms of the Town and Country Planning (Modification and Discharge of Good Neighbour Agreements) (Scotland) Regulations 2010.