

FALKIRK COUNCIL

**Subject: IMPLEMENTATION OF THE PLANNING ETC (SCOTLAND) ACT 2006 –
LOCAL REVIEW BODIES AND SCHEMES OF DELEGATION**
Meeting: FALKIRK COUNCIL
Date: 24 June 2009
Author: DIRECTOR OF DEVELOPMENT SERVICES

1. INTRODUCTION AND CONTEXT

1.1 The purpose of this report is to:

- (a) consider the detailed provisions contained in the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.
- (b) seek approval for amendments to the existing Standing Orders, particularly the Scheme of Delegation for general planning matters.

1.2 The Planning etc (Scotland) Act 2006 made provision for major changes to the delivery of planning services across Scotland including a new Development Management system. These changes are part of the modernising planning agenda which seeks to improve the delivery of planning services and make the system fit for purpose and more open, transparent and efficient.

1.3 Central to this system is a more proportionate way of processing and determining applications based on a new hierarchy of developments comprising:

- **National developments**, set out in the National Planning Framework all of which fall to be determined by full Council;
- **Major developments**, determined by local authorities and subject to enhanced consultation and scrutiny, including a requirement in certain instances to be determined by Council rather than a committee of the Council where the recommendation, if approved, would result in significant departure from the Development Plan; and
- **Local developments**, determined by local authorities with significant delegation to an 'appointed officer'.

1.4 The Schemes of Delegation and Local Review Procedure Regulations 2008 require local authorities to implement a number of key actions. These include:

- The preparation and submission to Scottish Ministers of a scheme of delegation for their approval, which sets out which applications will be determined by an appointed officer;

- The means of identification of an appointed officer authorised to determine any application delegated under the scheme;
- The establishment of a Local Review Body to determine requests by applicants to review a decision of the appointed officer in respect of an application for a local development or the failure of the appointed officer to determine an application for a local development;
- The introduction of procedures for conducting reviews, whether by written submission or hearing, and consideration of whether an assessor is required in any case to advise the Local Review Body and how such an assessor is appointed.

1.5 The changes set out in the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 are currently being phased in. The regulations relating to production of a scheme of delegation for local development came into force on 6 April 2009. It is expected that local authorities should submit a scheme of delegation to Scottish Ministers by 30 June 2009. The remaining changes under the regulations, including the creation of a Local Review Body, come into force on 3 August 2009.

1.6 The classes of major development and the related thresholds and criteria are set out in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. The schedule describing major developments is attached to this report as Appendix 1. All development other than national developments and major developments belong to the category of local developments.

2. EXISTING SITUATION

2.1 Planning authorities currently operate schemes of delegation under provisions of the Local Government (Scotland) Act 1973. These schemes delegate authority from Members to enable officers to take decisions on planning applications and a wider range of other planning matters such as determining applications for listed building consent and conservation area consent as well as decisions on a range of other administrative processes which may include enforcement action. These existing powers for delegation of decisions in relation to other applications will remain largely unaffected by the modernising proposals.

2.2 The Council's existing Scheme of Delegation delegates authority to the Director of Development Services to take a variety of planning decisions. This scheme is an interim one following changes in October 2007 to the then existing Scheme of Delegation and pending introduction of the new regulations. The interim scheme sought to address concerns by Members over what might be perceived as a subjective judgement as to what applications might be deemed as 'controversial'. The previous scheme had provided for those applications deemed by the Director of Development Services to be controversial to be determined by the Planning Committee. Provision within the interim scheme for Members to refer any application to the Planning Committee was intended to give Members a more defined role in the decision making on applications considered of public interest.

3. PROPOSALS

Scheme of Delegation

3.1 The 2006 Act provides for planning authorities to adopt a scheme of delegation that describes the circumstances in which officers can take decisions in respect of planning applications within the category of 'local developments'. It is proposed by the Scottish Government that officers will

take the full range of decisions on applications for local developments: approval; approval with conditions; and refusals. The scheme will be required to be revised every 5 years.

- 3.2 The regulations provide scope for planning authorities to draft schemes of delegation that are appropriate for their circumstances, and only prohibits from delegation applications by or in which planning authorities or their Members have a financial or ownership interest. Beyond these matters it is for the planning authority to make a judgment on the extent to which delegation to officers is permitted.
- 3.3 The Scottish Government considers that the new provisions are central to the modernising planning agenda and are designed to ensure that the process is more efficient and proportionate. It is envisaged that Members will, in terms of the development management function, focus on determining major development proposals of strategic importance or proposals which raise significant controversy or policy issues. It should be noted that the Planning Committee would maintain a decision-making interest in applications for local development in terms of those items excepted from delegation to officers and further, should there be any request by the applicant for the decision of the appointed officer to be reviewed this review would be undertaken by a Local Review Body comprising, it is proposed, Planning Committee Members.
- 3.4 It is proposed that the existing Scheme of Delegation be amended to detail the circumstances where delegated powers will not apply in relation to both major and local developments with reference to the new hierarchy of developments. The proposed amended Scheme of Delegation is attached as Appendix 2. The circumstances where delegated powers will not apply are listed as circumstances (i) to (vii). Circumstances (i), (ii) (insofar as it relates to applications by a member of the planning authority) and (iii) reflect the matters that are prohibited under the regulations from being delegated, at least in relation to local developments. Circumstances (iv) (vi) and (vii) are retained from the existing Scheme of Delegation. Circumstance (v) is a new provision. Circumstance (vi) retains the existing provision to enable individual Members to request referral of an application to the Planning Committee for consideration. A new proposal is that the Member would be required to include a statement of reasons for the request. It is considered that this requirement would accord with the modernising planning agenda to make the delivery of planning services more open and transparent and would ensure conformity with S43A (7) of the 1997 Act.

Appointed Officer

- 3.5 The appointed officer as referred to in Regulation 3 is the person who is to determine all applications specified in terms of the Scheme of Delegation. It is suggested that the "appointed officer" could be the Director of Development Service who has power, in terms of the Council's Standing Orders, to authorise others to act on her behalf and this can be replicated in the new arrangements. However, there is no requirement to explain in the new Scheme of Delegation which officers would be appointed to determine individual applications.

Local Review Body

- 3.6 The new Act provides for an applicant for planning permission to seek a review of the decision taken by the appointed officer under the new scheme of delegation for local development, or of the failure of the appointed officer to determine an application for local development within the specified time period. This replaces the existing appeal process to the Scottish Government for applications which are now described as local developments. The regulations require a request for a review to be conducted by a Local Review Body, which will operate as a Committee of the

Council comprising a minimum of three elected members. The purpose of the review is to consider those matters that were before the appointed officer at the time of the initial determination. Additional matters shall not be raised unless it can be demonstrated that the matter could not have been raised before that time or that exceptional circumstances prevail.

- 3.7 The administrative procedures for the review process are outlined to an extent in the regulations. It is proposed that the procedures to be adopted for the Council's review process should be drafted by Law and Administration Services in liaison with Development Services, and that approval of these procedures should be delegated to the Planning Committee.
- 3.8 A proposed revision of the existing Standing Orders to establish a Planning Review Committee to undertake the new local development review function is attached as Appendix 3. It is proposed that the Planning Review Committee comprise the Convener and Depute Convener of the Planning Committee and three other members drawn from the Planning Committee on a rota basis, all members of the Planning Committee being eligible to be members of this committee from time to time.
- 3.9 Suitable arrangements will need to be made for legal, technical and administrative support to the Local Review Body. It is suggested that Law and Administration Services administer the meetings of the Local Review Body as is currently done for committees. Additionally, it is suggested that there should be support from officer(s) within Development Services at an appropriate level and that the officer(s) should not have had any involvement in the delegated decision process for that application, so that the advice is seen as independent and impartial. Other options for providing factual and technical advice include use of external consultants and investigation of the opportunities for establishing reciprocal agreements with neighbouring planning authorities.

4. IMPLICATIONS

Legal

- 4.1 The Local Review Body procedure is an entirely new concept and has not been trialed elsewhere in the UK. The potential for legal challenge of decisions taken by the Local Review Body is similarly untested. Any concern that the Local Review Body has not made a fair and impartial decision or that it has insufficient expertise to make the decision could invite challenge under Human Rights legislation. Review decisions will be open to challenge in the courts (as can happen at present), continued care will be needed in drafting the decision.

Financial

- 4.2 There will be financial implications arising from the changes outlined in this report. Additional costs will be incurred in provision of the legal, technical and administrative support required to carry out the review function by the Local Review Body, which will include the conducting of hearings and site visits. Balanced against this, it is anticipated there would be savings in the legal, technical and administrative costs associated with preparing and reviewing Committee reports and attending Committee meetings, if Committee workload is reduced. Costs associated with appeals to the Scottish Government will also reduce as a consequence of decisions on local developments now being subject to Local Review Body procedures. The cost implications cannot be quantified until the new procedures are in practice.

Personnel

- 4.3 There will also be personnel implications arising from the changes outlined in this report. Additional personnel resourcing will be incurred in the provision of legal, technical and administrative support required to carry out the review function by the Local Review Body. However, this would be offset to some extent if the Committee workload reduced. The overall workload may, however, increase with neighbour notification of applications to be carried out by the Planning Authority and depending on the outcome of the review of permitted development rights for householder applications. In addition, the requirement for major developments where the proposed disposal is significantly contrary to the development plan to be determined by full Council will have personnel implications and a need for training of all Members.

5. CONCLUSION

- 5.1 This report considers the new regulations for Schemes of Delegation and Local Review procedures and sets out proposals for a revised Scheme of Delegation for dealing with planning applications, the establishment and form of a Local Review Body, in order to implement these regulations and consequential amendments to the existing Standing Orders. The new regulations are part of the modernising planning agenda which seeks to improve the delivery of planning services and make the system fit for purpose and more open, transparent and efficient.
- 5.2 The proposals will enable the Council to meet its obligations in terms of the Government's aspiration for delivering planning reform. The proposals have the potential to enable an improvement in performance whilst ensuring continuing democratic involvement in the decision making process where appropriate and proportionate to the nature of the development.
- 5.3 The report notes that Council procedures will need to be drafted in relation to the Local Review Body process and recommends that approval of these procedures be delegated to the Planning Committee.

6. RECOMMENDATION

6.1 It is recommended that Council:

- (a) **Note the implications for the Council's processing and determining of planning applications arising from the Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulations 2008 as detailed in this report;**
- (b) **Agree to the terms of the proposed amendments to the existing Scheme of Delegation set out in Appendix 2 and for submission of this Scheme to Scottish Ministers by their deadline of 30 June 2009, for their consideration in relation to the delegation of powers for the determination of applications for local developments;**
- (c) **Agree to the proposed amendments to the existing Standing Orders set out in Appendix 3 in order to establish a Planning Review Committee to implement the Council's new local review body function;**
- (d) **Agree that approval of the administrative procedures for the Council's Local Review Body process be delegated to the Planning Committee;**

- (e) Agree that the effective date for implementation of the amended Standing Orders, including the Scheme of Delegation and the establishment of the Falkirk Council Planning Review Committee will be 3 August 2009 or on such later date on which the Council's amended Scheme of Delegation is approved by Scottish Ministers.

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Director of Development Services

Date: 16 June 2009

LIST OF BACKGROUND PAPERS

- The Planning etc (Scotland) Act 2006
- Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulation 2009