

FALKIRK COUNCIL

**Subject: IMPLEMENTATION OF THE PLANNING ETC (SCOTLAND)
ACT 2006 - AMENDMENT TO THE SCHEME OF
DELEGATION**
Meeting: FALKIRK COUNCIL
Date: 22 June 2011
Author: DIRECTOR OF DEVELOPMENT SERVICES

1. INTRODUCTION

- 1.1 The purpose of this report is to seek approval for amendments to the Scheme of Delegation for general planning matters. The Scheme of Delegation sets out which planning applications and other development management matters are reserved to full Council, which are determined by the Planning Committee and which are to be determined by the Director of Development Services under delegated powers.
- 1.2 On 1 February 2011, the new Sections 75 to 75G of the Town and Country Planning (Scotland) Act 1997, introduced by the Planning etc (Scotland) Act 2006, together with the Town and Country Planning (Modifications and Discharges of Planning Obligations) (Scotland) Regulations 2010 and the Town and Country Planning (Modifications and Discharges of Good Neighbourhood Agreement) (Scotland) Regulations 2010, came into force. These changes are part of the Scottish Government's modernising planning agenda and introduce new provisions relating to planning agreements (now known as planning obligations) and good neighbour agreements.
- 1.3 These changes give rise to the need to reconsider the Council's Scheme of Delegation. There is also an opportunity to clarify applications for *prior approval*.

2. PLANNING OBLIGATIONS

- 2.1 Planning agreements are a well-established feature of the planning system and are used to overcome obstacles to the grant of planning permission through, for example, securing measures to eliminate, reduce or compensate for adverse impacts from development on land use, the environment or infrastructure. Up until now, they have involved agreement between the developer or landowner and the planning authority.
- 2.2 Under the new provisions, developers and landowners can still enter into planning agreements with planning authorities. However, they can also, should they wish, undertake planning obligations unilaterally to restrict development of the use of land without the agreement of the planning authority. Collectively, these agreements and unilateral undertakings are known as 'planning obligations'. This change brings the system into line with that in England and Wales.

3. GOOD NEIGHBOUR AGREEMENTS (GNAs)

- 3.1 A GNA is an agreement voluntarily entered into between a developer and a community body. The definition of a community body includes the Community Council or a body or trust with a substantial connection to the land whose object or function is to protect or enhance the amenity of the neighbourhood.
- 3.2 The potential scope of a GNA is very wide and can govern operations or activities relating to the development or use of the land, either permanently or during a specified time period, but cannot require the payment of money.

4. MODIFICATION AND DISCHARGE

- 4.1 The changes expressly allow for the modification or discharge of a planning obligation or the provisions of a GNA. Again, this brings the system into line with that in England and Wales.
- 4.2 Planning obligations may be discharged or modified by agreement between the planning authority and the person against whom the obligation is enforceable. GNAs may be discharged or modified by agreement between the community body and the person against whom the GNA is enforceable. Alternatively, they may be discharged or modified by a formal application to the planning authority by the relevant person. The introduction of a formal application procedure marks a key change to the planning system as modifications and discharges were previously carried out by simple agreement between the parties.
- 4.3 Where an application is made, the planning authority has two months to decide whether the provision in question is to continue to have effect, be discharged or continue to have effect subject to modifications. In the case of GNAs, to which the local authority will not be party and may not have any interest, the authority will have the task of adjudicating between the developer/landowner and the community body and making the ultimate decision. An application to discharge or modify a GNA must be accompanied by evidence to demonstrate that attempts have been made to negotiate the amendment to the GNA.
- 4.4 There is a right of appeal to the Scottish Ministers against the decision of the planning authority (with a further right of appeal against that decision to the Court of Session on more narrow grounds). A right of appeal to Scottish Ministers also exists where the planning authority has failed to determine the application within 2 months. The appeal provisions apply in respect of applications to discharge or modify both planning obligations and GNAs.
- 4.5 An application for discharge or modification may be made in respect of planning agreements entered into prior to and after 1 February 2011.

5. PROPOSED CHANGES TO THE SCHEME OF DELEGATION

- 5.1 Generally, it is recommended that the decision to modify or discharge a planning obligation or GNA would be taken by the body that determined the planning application to which the obligation or GNA relates. This may be the full Council, the Planning Committee or the Director of Development Services under delegated powers, depending on the circumstances.

- 5.2 A proposed exception to this is where the modification or discharge relates to an application determined by the Planning Committee solely by virtue of it being a Council application, an application by a member of the Council or an officer involved in the statutory planning process, or an application relating to land in the ownership of the Council or to land in which the Council has a financial interest. In this case, the matter would be delegated to the Director of Development Services. However, it is proposed that the Director of Development Services would retain a discretion to refer the matter to the Planning Committee should this, for any reason, be considered appropriate.
- 5.3 Another proposed exception is where the modification or discharge relates to an application where the decision was reviewed by the Local Review Body (Planning Review Committee). In this case, there may be circumstances where it would be appropriate to refer the matter to the Planning Committee, at the discretion of the Director of Development Services.
- 5.4 In addition, this report provides an opportunity to clarify that delegated powers apply to applications seeking a determination as to whether the *prior approval* of the planning authority is required in respect of siting, design and external appearance (by means of submission of a planning application). Such determinations may be sought in respect of agricultural buildings and operations, forestry buildings and operations, electricity undertakings and demolition of buildings.
- 5.5 The Scheme of Delegation for general planning matters is proposed to be amended accordingly.

6. IMPLICATIONS

Legal

- 6.1 The introduction of formal procedures for modification and discharge of planning obligations includes a right of appeal to the Scottish Ministers and a further right of appeal to the Court of Session.

Financial

- 6.2 There will be financial implications in administering the new procedures. The costs would extend to include technical and legal input, where required. A fee is not payable for the formal application to help offset the costs. The local authority role to adjudicate between the development/landowner and the community body raises questions of cost which cannot be quantified until experience is gained in this new procedure.

Personnel

- 6.3 There will be personnel implications in administering the new procedures and dealing with technical and legal aspects as required. The GNA procedures have resourcing implications which cannot be quantified at this time. The proposed changes to the Scheme of Delegation are proportionate and seek an efficient approach whilst recognising that consideration under delegated powers will not be appropriate in all cases.

7. CONCLUSION

- 7.1 This report sets out proposals for changes to the Council's Scheme of Delegation for general planning matters. The need for this arises from the introduction of procedures to modify and discharge planning obligations and good neighbourhood agreements, which are an aspect of the Scottish Government's modernising planning agenda. The legal, financial and personnel implications are outlined in this report. In addition, the opportunity is taken to clarify the determination of applications for Prior Approval.

8. RECOMMENDATION

8.1 It is recommended that Council:

- (a) **Note the introduction of planning obligations and good neighbour agreements, the procedures for modifying and discharging planning obligations and good neighbour agreements, and the implications for the planning authority as detailed in the report, and**
- (b) **Agree to the terms of the proposed amendments to the existing Scheme of Delegation, as set out in Appendix 1 and indicated in italics, and submission of this amended Scheme to Scottish Ministers for their information.**

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Director of Development Services

Date: 14th June 2011

Contact Officer: Brent Vivian. Ext. 4935

LIST OF BACKGROUND PAPERS

1. The Planning etc. (Scotland) Act 2006.
2. Town and Country Planning (Modifications and Discharges of Planning Obligations) (Scotland) Regulations 2010.
3. Town and Country Planning (Modifications and Discharges of Good Neighbourhood Agreement) (Scotland) Regulations 2010.
4. Planning Circular 1/2010: Annex to Circular 1/2010: Planning Agreements, Planning obligations and Good Neighbour Agreements.

Any person wishing to inspect the background papers listed above should telephone 01324 504935 and ask for Brent Vivian.

PLANNING COMMITTEE

For the avoidance of doubt, under S 56 (6A) of the 1973 Act, there is reserved to full Council, the determination of all applications which fall within S 38A (1) of the Town and Country Planning (Scotland) Act 1997. These are applications which require a mandatory pre-determination hearing prior to determination and include “national developments” as set out in a National Planning Framework and major developments which are significantly contrary to the development plan.

Applications for modification or discharge of planning obligation or good neighbourhood agreements where the application was determined by full Council shall also be determined by full Council.

Terms of Reference

1. To discharge the Council’s regulatory and enforcement functions, in accordance with Council policy and so far as not delegated to the Planning Review Committee or any other Committee or Officer, which relate (but not exclusively) to:-
 - (i) Town and Country Planning;
 - (ii) Roads and Transportation;
 - (iii) Building Control;
 - (iv) Other matters of a regulatory or enforcement nature.

Powers

2. In relation to development control matters, to determine applications for:
 - (i) listed building and conservation area consent
 - (ii) discharge, amendment or deletion of conditions
 - (iii) certificates of lawfulness of existing or proposed development
 - (iv) advertisement consent
 - (v) hazardous substances consent
 - (vi) decisions on permitted development, and
 - (vii) planning permission in relation to major and local developments in terms of S26A(1) subsections (b) and (c) respectively of the Town and Country Planning (Scotland) Act 1997, other than those which require to be determined by the Council in terms of the provisions of S56(6A) of the 1973 Act, in circumstances where:-

- (a) the application has been made by the Council;
 - (b) the application has been made by a member of the Council or by an officer involved in the statutory planning process;
 - (c) the application relates to land in the ownership of the Council or to land in which the Council has a financial interest;
 - (d) determining the application (whether by grant or refusal) would result in a contravention of the development plan or a contravention of the Council's policies, whether or not objections have been made;
 - (e) it is proposed to approve the application and there is a formal objection from a statutory consultee which would trigger referral of the application to Scottish Ministers;
 - (f) there has been a request from an elected member to refer any matter to committee within 7 days of the periodical recommendations list being issued, in which case reasons must be stated; or
 - (g) for any other reason, the Director of Development Services considers it inappropriate to consider the application under delegated powers
- (viii) *modification or discharge of planning obligations or good neighbour agreements other than in circumstances where:-*
- (a) *the application was determined by full Council;*
 - (b) *the application was determined by the Planning Committee solely by reasons of 2(vii)(a), (b) or (c) unless, for any reason, the Director of Development Services considers it inappropriate to consider the application for modification or discharge under delegated powers; or*
 - (c) *the application was determined by the Director of Development Services unless her decision was subject to review by the Planning Review Committee and, for any reason, she considers it inappropriate to consider the application for modification or discharge under delegated powers.*
3. To hear and determine unresolved objections to any order proposed for the regulation of traffic and the implementation of traffic management schemes under the Road Traffic Regulation Act 1984, the Roads (Scotland) Act 1984 and the Local Roads Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1987, and to conduct any hearings required under those Acts and Regulations.
 4. To consider and determine any of the regulatory and enforcement matters relating to the Council's functions as Roads Authority, in terms of the Roads (Scotland) Act 1984, the Road Traffic Regulation Act 1984, the Town and Country Planning (Scotland) Act 1997 or any other relevant Acts or Regulations, where the nature of the matter has been deemed controversial by the Director of Development Services.
 5. To conduct hearings under the Building (Scotland) Act 2003 and to make appropriate determinations.
 6. To agree the procedures relating to conduct of any review carried out by the Planning Review Committee, other than those already set out in regulations or a development order.
 7. In carrying out any of their powers hereunder, the Committee may:-
 - (i) conduct hearings in such manner as they consider appropriate, having regard to the subject matter under consideration and the requirements of law;

- (ii) visit any site connected with a matter under consideration if it would assist the Committee in the discharge of their functions;
- (iii) authorise the institution, entering appearance in or defending of any proceedings before any Court, Tribunal or Inquiry (where not authorised elsewhere in these Schemes of Delegation) where Council involvement is necessary to protect or uphold the interests of the Council and its community in respect of any matter within the remit of the Committee, provided that it will remain open to any Chief Officer to provide the foregoing authority where time limits or an emergency situation requires immediate action to ensure the Council's participation in the proceedings.

8. Any regulatory or enforcement powers or duties conferred or imposed on the Council in terms of law, apart from those detailed herein as being within the remit of the Council, the Planning Committee or the Planning Review Committee will be executed by the Chief Officer for the relevant Service and, in the event of there being any conflict as to which is the relevant Service, the Chief Executive will be entitled to decide. Without prejudice to the generality of the foregoing, it is specifically acknowledged that the Director of Development Services will have power to:-

- (i) vary or otherwise any planning permission where the variation sought is not material, under Section 64 of the Town and Country Planning (Scotland) Act 1997;
- (ii) advertise applications for planning permission when considered necessary or desirable;
- (iii) decide whether the topping, lopping or felling of trees subject to Tree Preservation Orders is necessary in terms of Section 160 of the Town and Country Planning (Scotland) Act 1997 and the authorisation of such activities;
- (iv) make emergency Tree Preservation Orders;
- (v) issue stop notices and instruct action for interim interdicts;
- (v) issue breach of condition and planning contravention notices;
- (vi) pursue enforcement action;
- (vii) issue statutory notices in terms of the Building (Scotland) Act 2003 and any Regulations made there under or any amendment thereof;
- (viii) *determine whether the prior approval of the Planning Authority is required.*

PLANNING REVIEW COMMITTEE

Terms of reference

- 1 To discharge the planning authority's functions in terms of Section 43A (8) of the Town and Country Planning (Scotland) Act 1997 in connection with the review of any planning decision taken by an officer appointed for that purpose in terms of Section 43A (1) of the said Act.

Powers

2. When required to do so by the applicant to review any application which has been dealt with by an officer appointed in terms of Section 43A (1) above where;
 - (i) the application has been refused;
 - (ii) the application has been granted subject to conditions; or
 - (iii) the application has not been determined within such period as may be prescribed by regulations or a development order.
3. To uphold, reverse or vary any determination made in terms of 2(i) or 2(ii) above.
4. To determine any application which has not already been determined in terms of 2(iii) above.
5. To conduct any review in accordance with regulations or a development order made in terms of Section 43A (10) of the said Act or as decided by the Planning Committee, which shall, without prejudice to the foregoing include the power to:-
 - (i) hold pre-examination meetings to determine the manner in which the review is to be conducted;
 - (ii) invite written submissions;
 - (iii) hold hearing sessions;
 - (iv) undertake site visits;

PART 3

SCHEME OF DELEGATION TO OFFICERS

7. The Council's chief officers may authorise other officers to exercise powers delegated to them, including for the avoidance of doubt, in the case of a chief officer dealing with planning matters, to appoint persons to determine planning applications in terms of s. 43(A) (1) of the Town and Country Planning (Scotland) (Act) 1997. However, actions taken under that authority must be taken in the name of the chief officer concerned, and remain his or her responsibility.