

## **EAST AYRSHIRE COUNCIL**

**DEVELOPMENT SERVICES COMMITTEE: 5 JUNE 2001**

### **REVIEW OF THE SCHEME OF DELEGATION**

#### **Report by the Director of Development Services**

## **1. PURPOSE OF REPORT**

1.1 The purpose of the report is to review the Scheme of Delegation which determines the route whereby planning and other applications are considered.

## **2. INTRODUCTION**

2.1 Many factors impact on the delivery of planning decisions. The Government continues to stress that the public are entitled to receive planning decisions within certain specified periods and this review will assist in that regard. However, the review and its recommendations will also clarify the intent of the Scheme of Delegation in certain areas, will bring it up to date with regard to the emerging Local Plan, will reflect the desire for local accountability and will formalise practice in areas such as the determination of telecommunications development where the Development Services Committee has already agreed the appropriate decision making venue.

2.2 Following consideration of this report by the Development Services Committee, the Committee's decisions will then be incorporated into a report to the full Council by the Head of Legal and Administration reviewing the Council's Scheme of Delegation as a whole.

2.3 Hereafter, this report addresses the changes proposed to the Scheme of Delegation with reference to the three possible decision routes:- Delegated to the Head of Planning and Building Control, determination by Local Planning Committee and by the Development Services Committee.

## **3. HEAD OF PLANNING AND BUILDING CONTROL**

3.1 Alterations are proposed with regard to "delegated" applications, specifically the limited extension of delegation to include the issue of refusal of shop front applications and applications for consent to display advertisements. Such relatively minor applications tend not to be contentious and there would be benefits in terms of the Division's level of performance. Applicants aggrieved by a refusal would retain a right of

appeal to the Scottish Ministers which would secure their right to a fair and independent hearing under the Human Rights Act 1998.

3.2 Currently, even where there may be an extant, detailed planning consent for a large housing development, if the developer proposes the revision of 5 or more house types, the scheme of delegation requires consideration of the application by a Local Planning Committee. It is suggested that where a "house types" amendment is proposed, this should be delegated to the Head of Planning and Building Control regardless of the number of units affected provided there is no change to the approved number of units or to the character of the original consent.

3.3 No provision is currently made for the determination of claims for "hazardous substances deemed consent". These are not formal planning applications and comprise a notification to the Planning Authority claiming deemed consent for the keeping of hazardous substances under the Town and Country Planning (Section 10A) (Hazardous Substances) (Scotland) Regulations 1993. If an established quantity of such material has been maintained on site for a period of 12 months preceding May 1993 the claim would be valid regardless of any view the Authority may have on the matter. If the claims cannot be disputed, and after a period of two weeks from receipt, the claim for consent is deemed to be granted. Given the tight timescale involved and the fact that the Planning Authority is not able to consider the merits of the storage use itself, it is considered that the processing of such claims should be delegated to the Head of Planning and Building Control.

3.4 It is suggested that there should be further minor alterations to the authority delegated to the Head of Planning and Building Control to distinguish between the two types of Certificate of Lawfulness; ie Lawfulness of Existing Use or Development and Lawfulness of Proposed Use or Development. A clarification is also recommended of the delegated authority relative to works proposed to trees covered by a T.P.O.

3.5 The agreement of the Development Services Committee on the 29 September 1999 to give officer delegation for the processes of "Screening" and "Scoping" under the Environmental Impact Assessment (Scotland) Regulations 1999 should be incorporated into the wider review of the Council's Scheme of Delegation.

#### **4. LOCAL PLANNING COMMITTEE**

4.1 Again, some minor alterations for the purposes of clarification are proposed. Consequent, upon changes to the authority delegated to the Head of Planning or Building Control it is necessary to reflect the revised wording of that within the scheme of delegation. This will confirm those applications to be determined by Local Planning Committees where the proposal is subject to objection, recommended for refusal or as agreed further to a request from a Local Member. The Development Services Committee has agreed on 28 June 1999 that an objection is an adverse or negative

representation on material planning grounds from any objector to a proposal including a consultee.

4.2 It is also considered appropriate to confirm that the Local Planning Committees should determine applications subject to a Legal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, where the nature of the associated planning dictates determination by the Local Planning Committee.

4.3 It is proposed that with regard to Minerals related development, clarity should be offered to current practice such that Local Planning Committees determine all minerals applications; including new minerals extraction, extensions, alterations to method of working and mineral and railway lines; where the proposal is substantially in accordance with the opencast coal subject plan.

4.4 The Environmental Impact Assessment (Scotland) Regulations 1999 now quite properly secure information enabling the informed determination of a wide range of applications. However, not in all cases could such affected applications be viewed as being strategic in nature or requiring consideration by the Development Services Committee. It is appropriate that the decentralised principles underlying the delivery of the planning function should be explicitly presented in the Scheme of Delegation. To that effect, all development requiring Environmental Statement/Assessment should be determined by a Local Planning Committee unless separately required to be considered by the Development Services Committee.

4.5 As agreed previously by the Development Services Committee all applications for telecommunications development, and where the proposal involves a fixed radio transmitter or receiver, will be determined by Local Planning Committee.

4.6 In as much as applications to top, lop and fell T.P.O. covered trees are delegated to the Head of Planning and Building Control when recommended in accordance with the professional and practical advice of the Department of Community Services; where not recommended in accordance with such advice the T.P.O. application should be determined by the Local Planning Committee.

## **5. DEVELOPMENT SERVICES COMMITTEE**

5.1 Minor alterations to the scheme of delegation under this category should comprise references to the Scottish Ministers instead of the Secretary of State and large tourism/leisure developments and Renewable Energy proposals being separately identified within the scheme.

5.2 With regard to Minerals related development, clarity should be offered to current practice such that the Development Services Committee will only consider applications for minerals related development, (including new minerals extraction, extensions, alterations to working method and minerals railheads and railway lines), where the

proposal constitutes a significant departure from the opencast subject plan and where the recommendation is for approval. The Committee will also consider referrals from Local Planning Committees on this basis. The above approach is consistent with the extent of the involvement of the Development Services Committee in relation to other application types in terms of compatibility with the policy framework.

5.3 It is also suggested that the Development Services Committee should have referred to it for consideration planning applications where the Local Planning Committee decide to refuse an application which has been recommended for approval by the Head of Planning and Building Control and where the principle of development is in accordance with the East Ayrshire Local Plan. This would parallel the existing referral to the Development Services Committee of applications where the Local Planning Committee decides against the recommendation of the Head of Planning and Building Control and recommends to approve an application which is a significant breach of policy.

5.4 In both the scenarios above the Development Services Committee will have the opportunity of considering the wider implications of a Local Planning Committee recommendation, setting them against the requirement of Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 wherein it states that applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

## **6. LEGAL/FINANCIAL IMPLICATIONS**

6.1 None.

## **7. RECOMMENDATION**

**7.1 It is recommended that the Committee agree the changes and recommendations listed in Paragraph 3.1 to 5.4 of this report and the Scheme of Delegation as revised (Annex A to this report).**

**7.2 It is further recommended that it is remitted to the Director of Development Services in consultation with the Director of Corporate Services to make the necessary arrangements to incorporate the proposed changes within the review of the Scheme of Delegation Council wide.**

**Stephen Chorley  
Director of Development Services**

1 June 2001

(DVM/MS)

## **LIST OF BACKGROUND PAPERS**

1. Environmental Impact Assessment (Scotland) Regs 1999.
2. Town and Country Planning (Hazardous Substances) (Scotland) Regs 1993.
3. Reports to Development Services Committee of 28 June and 29 September 1999.
4. Human Rights Act 1998.

Anyone wishing to inspect the above Background Papers should contact David Morris on (01563) 576753.

**Implementation Officer: Dave Morris**

## **"Annex A"**

### **ALTERATIONS TO SCHEME OF DELEGATION**

#### **DECISION VENUE : DEVELOPMENT SERVICES COMMITTEE**

Full delegated powers to deal with all matters detailed within the Terms of Reference which include determining all planning applications which primarily will be the following:-

Application referred from Local Planning Committees when the relevant Local Planning Committee decides against the recommendation of Head of Planning and Building Control and recommends approval of an application which is a significant breach of Council policy.

Applications requiring notification to **Scottish Ministers** (excluding Listed Building Consents and Conservation Area Consents).

Applications referred from the Local Planning Committee where the relevant Local Planning Committee decides to refuse an application which has been recommended for approval by the Head of Planning and the principle of the application is in accordance with the East Ayrshire Local Plan..

Application for Notices of Intention to Develop where referral to **Scottish Ministers** is required.

Applications involving a significant departure from the development plan **OR** raising a significant new planning issue.

#### **Industry**

A new industrial site on land not currently zoned for industrial use.

Industrial development of more than 5 hectares on land outwith current marketed land supply.

Use of strategic sites for other purposes, including general industry.

## **Retail/Commercial**

Retail and Warehouse Development over 2000 square metres.

## **Tourism/Leisure**

Tourism/leisure development costing £1 million plus.

## **Renewable energy**

All commercial renewable energy proposals and waste transfer sites.

## **Minerals Related Development**

The following developments where the proposal constitutes a significant departure from the opencast coal subject plan and where the recommendation is for approval, including referrals on this basis from Local Planning Committees.

- a) All new Minerals extraction.
- b) Alterations to the method of working of and extension to the depth or area of working in existing minerals extraction sites.
- c) Applications for minerals railheads and minerals railway lines.

## **Other**

Determining planning hearings at meetings of the Committee and to approve Traffic Regulation Orders.

## **Sections 38, 42, 43 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:-**

Listed Building Enforcement Powers, ie. execution of works required by Listed Building Enforcement Notice, compulsory purchase of listed buildings in need of repair, repairs notices.

All delegated powers subject to existing Council policies and compliance with approved Capital and Revenue Expenditure.

## **DECISION VENUE : LOCAL PLANNING COMMITTEE**

Consider the undernoted planning applications:

Applications for minor extension and alterations (eg. porches, dormer windows, bathroom, kitchen extensions, garages etc).

Applications for approval of reserved matters.

Full and outline applications, including change of use for small scale developments or minor works (eg. residential development under five units) which accord with the existing land use policies.

Full applications to revise 5 or more houses; where a detailed residential consent is already in place and where there is no change to the overall number of units or to the character of the original consent.

### **Single Caravans**

### **Single Dwellings in the Countryside**

Shop fronts, but only where subject to objection(s)

Industrial developments within Rowallan Business Park which are in accordance with the East Ayrshire Local Plan or an outline consent.

**Section 150** – Certificate of Lawfulness of Existing Use or Development

**Section 151** – Certificate of Lawfulness of Proposed Use or Development

**Sections 182 and 183** – Applications for consent to display advertisements, but only where subject to objection(s).

Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

**Sections 6 and 7** – Applications for Listed Building Consent or Conservation Area Consent.

**which are:-**

1. Subject to an objection from either a member of the public or a consultee;
2. Recommended for refusal, or

3. Agreed by the Director of Development Services or Head of Planning and Building Control in consultation with the Chair to be determined by Local Planning Committee.

## **AND**

The processing and implementation of Legal Agreements under Section 75 of the Town and Country Planning (Scotland) Act 1997 where the nature of the associated planning or other application dictates determination by the Local Planning Committee.

Larger applications which accord with the East Ayrshire Local Plan and are of area significance;

Conservation Area Consents involving complete demolition;

Listed Building Consents involving complete demolition;

Making of full Tree Preservation Orders;

Applications for Hazardous Substances Consent; (but not claims for deemed consent).

All development requiring Environmental Statement / Assessment (unless separately required to be considered by the Development Services Committee).

Applications involving a minor departure from the East Ayrshire Local Plan or raising a new, but minor, planning issue.

Applications to top, lop and fell trees covered by a TPO which are not recommended in accordance with the professional and practical advice, on safety grounds, from the Department of Community Services (irrespective of receipt of objections).

### **Minerals Related Development**

The following developments where the proposal is substantially in accordance with the opencast coal subject plan.

- a) All new minerals extraction.
- b) Alterations to the method of working of and extension to the depth or area of working in existing minerals extraction sites.
- c) Applications for minerals railheads and minerals railway lines.

## **Telecommunications Development**

All applications for such development where the proposal involves the introduction of a fixed radio transmitter/receiver.

## **DECISION VENUE : HEAD OF PLANNING AND BUILDING CONTROL**

Town and Country Planning (Scotland) Act 1997

**Section 12** – Consultations by neighbouring Planning Authorities regarding local plans.

**Section 38** – Consultations by neighbouring Planning Authorities regarding planning applications.

**Section 37** – The undernoted applications for planning permission except where there are objections from the public or Community Council which in the opinion of the Director of Development Services or Head of Planning and Building Control are valid, viz;-

Applications for minor extensions and alterations (eg. porches, dormer windows, bathroom, kitchen extension, garages etc).

Applications for approval of reserved matters unless previously agreed that such reserved matters should be determined by a Committee.

Full and outline applications, including change of use for small scale developments or minor works (eg. residential developments under five units) which accord with the existing land use policies.

Full applications to revise 5 or more houses; where a detailed residential consent is already in place and where there is no change to the overall number of units or to the character of the original consent.

Single Caravans

Single Dwellings in the Countryside

Shopfronts, including where recommended for refusal.

Industrial developments within Rowallan Business Park which are in accordance with the East Ayrshire Local Plan or an outline consent.

**Section 182 and 183** – Applications for consent to display advertisements, including where recommended for refusal.

**Section 125, 127, 129, 130, 136, 140, 145, 179, 186, 187** – Enforcement powers including planning and advertisement enforcement notices, planning contravention notices, breach of conditions notices, power to obliterate/remove posters/placards. Stop Notices where the Director of Development Services or Head of Planning and Building Control is satisfied that a breach of planning control has occurred. Power to submit to the Procurator Fiscal in connection with the above. The above delegated powers to be exercised following consultation with Head of Administrative and Legal Services where appropriate.

**Section 150** – Certificates of Lawfulness of Existing Use or Development except where subject to an objections

**Section 151** – Certificates of Lawfulness of Proposed Use or Development except where subject to an objections

Prior Notification of (a) Agricultural and Forestry Buildings, (b) relevant development by Electricity and Gas suppliers, (c) Demolition of buildings (Class 70 of GPDO) and (d) Toll Road facilities.

Consultations by the Forestry Commission/Authority in respect of new planting under the Woodland Grant Scheme and Felling licences.

Making a Provisional Tree Preservation Orders.

Applications to top, lop and fell trees covered by TPO which are recommended in accordance with the professional and practical advice, on safety grounds, from the Department of Community Services (irrespective of receipt of objections).

The processing and implementation of Legal Agreements under Section 75 of the Town and Country Planning (Scotland) Act 1997 where the nature of the associated planning or other application does not dictate determination by Committee.

### **Claims for Hazardous Substances Deemed Consent.**

#### **Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997**

**Sections 6 and 7** – Applications for Listed Building Consent or Conservation Area Consent (except complete demolition).

**Sections 3 and 4** – Service of a Building Preservation Notice in respect of a building not listed, which in the opinion of the Director of Development Services or Head of Planning and Building Control is worth listing, and is in imminent danger of demolition.

**Section 34** – Listed Building Enforcement Powers, ie. listed building enforcement notice. Exercised in consultation with Head of Legal Services where appropriate.

**Section 49** – Urgent works for the preservation of unoccupied Listed Buildings where the cost of the works is within Development Services revenue budget.

### **General**

Initiate and confirm Road Stopping Up Procedures following approval of related planning consents.

A decision on whether an Environmental Impact Analysis is required and the adoption and notification of a screening and/or scoping opinion under the Environmental Impact Assessment (Scotland) Regulations 1999 in respect of the need for and content of, an Environmental Impact Assessment.

DVM/FD

June 2001

**AGENDA**