



Executive Committee

No Direct Ward Relevance

1 July 2009

SCHEME OF DELEGATION TO OFFICERS - PLANNING SERVICES AMENDMENTS RELATING TO PLANNING ENFORCEMENT AND PLANNING OBLIGATIONS

(Report of the Head of Planning & Building Control)

1. Summary of Proposals

It is proposed to clarify the position relating to all delegated powers to Officers which relate to the planning enforcement function. The current constitution is unclear in relation to these powers, and therefore it would be beneficial to Officers, Members and the public for additional information to be inserted.

In relation to planning enforcement powers, additional delegated authority is sought for Officers in order that breaches of planning control can be dealt with and corrected more swiftly.

In relation to planning obligations, Members' consent for Officers to make minor variations to existing planning obligations is sought as there is currently no authority delegated to Officers.

2. Recommendation

The Committee is asked to RECOMMEND that

the proposed additions to the Scheme of Delegation to Officers, as detailed at Appendices 1 and 2 to the report, be adopted.

3. Financial, Legal, Policy, Risk and Sustainability Implications

Financial

- 3.1 There are no perceived financial implications for these proposals. However, the reduction in administration that would be required would result in small staff time savings. Those planning enforcement matters and variations to planning obligations where costs could arise would continue to require Member decisions before officers could take action.

Legal

- 3.2 There are no perceived legal implications, however the statutory framework under which planning decisions are made includes:

1990 Town and Country Planning Act (as amended).
2004 Planning and Compulsory Purchase Act.
2003 Anti-Social Behaviour Act
2008 Planning Act.

- 3.3 Section 101 of the Local Government Act 1972: A local authority may arrange for the discharge of any of its functions by an officer of the authority.
- 3.4 Under the Local Authorities' (Functions & Responsibilities) Regulations 2000, the Council's Town and Country Planning functions are reserved to Full Council and delegation of any Town & Country Planning powers can only be made by Council.
- 3.5 Under Section 106 of the Town & Country Planning Act 1990 any person interested in land in the area of a local planning authority may enter into an agreement (known as a 'planning obligation') restricting the development or use of the land in a specified way, requiring specified operations or activities to be carried out in, on, under or over land, requiring the land to be used in any specified way or requiring a sum or sums to be paid to the authority. The obligation can be negotiated between relevant parties or can be a unilateral undertaking offered by the Developer.

Policy

- 3.6 The decisions and actions of Officers would remain in accordance with the adopted policies of the Council and other bodies as appropriate.
- 3.7 The Council's Policy in respect of Planning Obligations is set out in Policy CS6 of the Borough of Redditch Local Plan No.3 and in several topic based Supplementary Planning Documents (SPDs). For example, there are SPDs requiring Education Contributions, Open Space Provision and Affordable Housing.

Risk

- 3.8 A lack of clarity and a lower speed of Officer response could result from inaction or the current situation.

Sustainability / Environmental

- 3.9 There is no perceived additional harmful impact arising from the proposal. The ability to take action more quickly to rectify breaches of planning control would have a positive impact on the quality of the environment and implementation of the sustainability objectives of the planning framework.

Report

4. Background

Scheme of delegation

- 4.1 There are several areas within the planning service where powers are delegated to Officers in order to improve the efficiency and speed of the service the Council provides. These areas include Planning Enforcement and Development Control (with a specific focus here on Planning Obligations which fall within the DC function).

Unclear delegated enforcement powers

- 4.2 The current constitution is unclear in relation to planning enforcement matters, and does not specify precisely what can be dealt with by Officers and what should be reported to Members for authorisation. A working arrangement has emerged over time, and this situation would benefit from clarity.

Additional delegated enforcement powers

- 4.3 Under the Corporate Plan priorities of safe, clean and green it is important that Officers can take action promptly to rectify any breaches of planning control and improve the quality of the built environment of the Borough.

Planning Obligations

- 4.4 Some historic planning obligations have included very specific requirements of the developer and/or the Council, which, by the time the development is implemented, are either inappropriate or irrelevant and have needed amending. In these cases, Officers have had to refer back to Planning Committee for authorisation to make such changes. In many cases these are very minor and not outside the overall vision of the development as considered by Committee at the time of determination, but simple procedural matters or minor variations.
- 4.5 All applications which are approved subject to a planning obligation are reported to Planning Committee for determination. The Committee approves the principle of the planning obligation and the heads of terms – the topic areas to be covered by the obligation – and then Officers complete the detailed administrative processes on their behalf. It is not proposed that this be changed.

5. Key Issues

Planning Enforcement Powers

- 5.1 In order to clarify the position, it is proposed that the text at Appendix 1 is inserted into the constitution, to give clear and accurate detail of those planning enforcement powers that are delegated to Officers. This includes both those powers that have been considered to be delegated through working practices over time, and those that are proposed here for addition, as follows:

Enforcement Notices

- 5.2 At present, all enforcement notices require the authority of Planning Committee before they can be issued. This introduces an often long delay in being able to take action as the matter must wait until the next available Committee meeting. There is also a resource implication in the preparation and writing of the committee report. Sensitive and high profile cases could continue be reported to Committee for authority.

High Hedge Remedial Notices and Tree Replacement Notices

- 5.3 These notices are only occasionally used and are generally non-contentious, and usually result only after careful scrutiny and in conjunction with the Landscape and Countryside Manager. They could easily be dealt with under delegated powers. With regard to tree replacement notices, there is a financial implication in that the only recourse for non-compliance with the notice would be direct action by the Council, so this would be referred to Planning Committee in the event that such action was required.

Prosecutions - General

- 5.4 Prosecution for non-compliance with legal notices issued under the planning acts, and those offences which constitute absolute offences, i.e. those that do not first require the service of a legal notice, such as works to listed buildings, require Planning Committee authorisation before they are undertaken. It is not proposed to change this as the undertaking of prosecution proceedings or direct action is likely to have financial implications.
- 5.5 The current scheme of delegation is unclear, and working practices result from the general methods of working that have accrued over time. It is therefore recommended that for the benefit of Officers, Members and the public, that clarity is introduced to the process, and to that end, an additional section is proposed to be inserted into the constitution detailing the delegated planning enforcement powers (see appendix 1).

Planning Obligations

- 5.6 In cases where the proposed variations to the planning obligation are minor in nature, such as where the heads of terms remain unchanged, but the specific locations of open space have altered due to alternative layouts gaining approval, it is often the case that the specific plan attached to an original planning obligation becomes superseded, often through the approval of reserved matters at planning committee. However, as a result the original obligation requires varying, because it becomes incorrect. This is a simple legal procedure, and results from subsequent changes to a development that Officers and Members have dealt with, and thus it is considered that Officers could deal with this without the need to refer back to Members, thus providing a quicker and more efficient service to our customers and reducing Officer time required in report writing.
- 5.7 In some situations, planning obligations have been drafted such that they specify exact details of affordable housing provision, and by the time the development is implemented then the need or mechanisms have changed. These too result in a variation of the planning obligation, and again are the result of other Member decisions such as at Executive Committee in relation to housing matters, and therefore it is suggested that Officers could deal with such matters.
- 5.8 There are some situations where more major variations to planning obligations are required, and these would still be reported to Planning Committee for agreement.
- 5.9 In some cases contributions have been requested towards work that the Council intended to do, and then has subsequently chosen not to do. In such cases, the money clearly needs to be paid back, because it cannot be spent as originally intended. In these cases, where Members have taken the decision not to proceed with a particular project in a formal forum such as Executive Committee, it is considered that Officers could deal with the resultant impact on the planning obligation requirements without recourse to Planning Committee as well, for efficiency.
- 5.10 Similarly to the position in relation to enforcement powers, there are no clear delegations other than when planning obligations are required in the first instance in relation to a planning application, and so for clarity within the constitution and for transparency, it is suggested that an additional section be inserted relating to these delegated powers. This can be found at appendix 2.

6. **Other Implications**

- Asset Management - No perceived implications. It should be noted that if exceptional circumstances should arise where the Council is in breach of planning legislation, the situation would be dealt with by Officers working across teams to resolve the matter speedily.
- Community Safety - Quicker responses to issues should result in quicker improvements to community safety by reducing risks more quickly.
- Human Resources - No major perceived implications, although fewer committee reports will result in additional staff time spent on resolving case work.
- Social Exclusion - No perceived implications.
- Sustainability - Quicker action to rectify problems should lead to longer term improvements to sustainable actions.

7. **Lessons Learnt**

- 7.1 The proposed changes to delegated powers in relation to planning obligations are the result of several cases that have occurred in recent times where time and resources have been lost by Officers due to the need to write reports and send them to Committee in order to have minor variations to planning obligations endorsed.
- 7.2 Planning Obligations are now worded to ensure that the requirements agreed by Members at Planning committee are controlled, but with a degree of flexibility built in to allow for minor or following variations to be made without the need for a deed of variation or similar. This can be done by referring within a legal document to the plans and particulars approved under the planning application, for example, which retains the relevant links without the need for cumbersome additional legal documentation. For example, rather than include a landscaping scheme and plans within a planning obligation attached to an outline planning permission, such details can be referred to as those to be agreed as part of the linked subsequent reserved matters application.

8. **Background Papers**

Current Scheme of Delegation to Officers.

Report to Executive Committee 3 December 2008 relating to delegated planning powers.

Report to Executive Committee 7 January 2009 relating to Planning Obligations.

Constitution.

9. **Consultation**

There has been no consultation other than with relevant Borough Council Officers.

10. **Author of Report**

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11. **Appendices**

Appendix 1 - Proposed schedule for insertion into the Constitution relating to delegated planning enforcement powers.

Appendix 2 - Proposed schedule for insertion into the Constitution relating to delegated planning obligation powers.