

# **Scheme of Delegation**

## **1. Introduction**

1.1 The Scheme of Delegation was agreed in July 2000 and modified in relation to planning applications, listed building consents and related matters in April 2002. There is now a need to further amend the Scheme to take account of the new power to serve Temporary Stop Notices. An opportunity has also been taken to resolve some ambiguities and consolidate matters in the present scheme and to specifically refer to Direct Action.

## **2. Recommendation**

(1) to approve the amended definition of Authorised Officer in the Scheme of Delegation (para 1.1. of Annex 1 to this report),

(2) to delegate authority to the Authorised Officer to issue Temporary Stop Notices and to issue Enforcement Notices and normal Stop Notices following a Temporary Stop Notice para. 3.1.7.),

(3) to delegate authority to the Authorised Officer to take Direct Action (para. 3.2.6.),

(4) to remove the duplication relating to the taking of proceedings (paras. 3.2.1 & 3.2.3),

(5) to consolidate references to the taking of proceedings by the Authorised Officer (para 4.1.1.),

(6) to approve the amendments relating to Discontinuance Notices and Amenity Notices (paras.3.2.4. & 3.2.5.),

(7) to approve the amended Scheme of Delegation as set out in Annex 1.

## **3. Links To The Corporate Plan**

3.1 Planning Enforcement is a key priority within the Corporate Business Plan and without revising the Scheme of Delegation the efficiency of the Planning Enforcement Function of the Council would be detrimentally affected.

## **4. Background**

4.1 On 7th March 2005 Part 4 of the Planning and Compulsory Purchase Act 2004 inserted sections 171E to 171H of the Town and Country Planning Act 1990. These provide for the service of Temporary Stop Notices. Temporary Stop Notices are different from the normal Stop Notice and are intended to be served quickly in the event of a serious breach of planning control. Service of Temporary Stop Notices can best be achieved expeditiously if the Scheme of Delegation is amended as proposed.

4.2 Currently the Scheme of Delegation does not recognise the newly introduced Temporary Stop Notice. The normal Stop Notice requires a formal Enforcement Notice to be served first and there is provision for financial compensation to be paid providing certain criteria are met. The Scheme of Delegation requires the Authorised Officer to

Notify the Chairman of the Development Control Committee and Local Ward Member(s). If no request for referral to Committee is received within a 7-day period then the action will proceed under delegated authority.

4.3 The new Temporary Stop Notice is quite different from the normal Stop Notice. Where a Local Planning Authority considers that there has been a breach of planning control, and that it is expedient that the activity amounting to the breach should stop immediately, the Local Planning Authority may issue a Temporary Stop Notice. This differs from the normal Stop Notice because an Enforcement Notice does not have to be issued first. The procedure for issuing a Temporary Stop Notice is also very much simpler as the owner of the land and persons responsible for the breach of planning control do not need to have been identified before service of the Temporary Stop Notice. In addition the effect of a Temporary Stop Notice will be immediate, it will not be necessary to wait three days before the Temporary Stop Notice takes effect or to give reasons why the Temporary Stop Notice will take effect immediately. This is in contrast to the normal Stop Notice.

4.4 The Temporary Stop Notice must be in the appropriate form setting out the activity that the Planning Authority considers is a breach of planning control. It must prohibit the carrying on of the activity and set out the reasons the Planning Authority considered it expedient to issue the Temporary Stop Notice.

4.5 If the persons carrying out the activity cannot be immediately located, or refuse service of the Temporary Stop Notice, a copy of the Notice displayed on the site will suffice.

4.6 Generally the Temporary Stop Notice expires 28 days after the display of the Notice on the site. During this period the Planning Authority must decide whether it is appropriate to take enforcement action. At the end of 28 days there is a risk of the activity resuming if an enforcement notice is not issued and normal Stop Notice served.

4.7 Unlike the normal Stop Notice there are very limited instances where financial compensation might be payable to someone affected by a Temporary Stop Notice.

4.8 The new procedure does not apply to the use of a building as a dwellinghouse and in other circumstances that the Secretary of State prescribes.

4.9 The Government Circular (02/2005) accompanying the new legislation states how important it is to serve Temporary Stop Notices quickly where appropriate. The Circular also states that drafting must be clear given that a prosecution would proceed on the basis of the Planning Authority needing to prove their case "beyond reasonable doubt". The Circular states "there is no opportunity for any drafting deficiency to be corrected after it (*a Temporary Stop Notice*) has been issued".

4.10 The Circular continues that it is expected the issuing of a Temporary Stop Notice will be likely to be relatively infrequent for many Planning Authorities. The advice states that a Temporary Stop Notice should only prohibit what is essential to safeguard amenity or public safety in the neighbourhood or to prevent serious or irreversible harm to the environment in the surrounding area. It is therefore not a tool to be used simply because the unauthorised development does not have planning permission.

4.11 As a Temporary Stop Notice only has effect for a maximum of 28 days any follow up by way of the issuing of an Enforcement Notice and normal Stop Notice should be

within the 28 day period. It follows that in these circumstances it would be inappropriate for the existing procedure for issuing normal Enforcement Notices to continue to be followed. If the Chairman of the Committee and Ward Member(s) were to be given 7 days notice and one decided to call for a Committee report it is likely the 28 day period would expire before a Committee decision was taken and follow up Notices could be issued.

4.12 It is therefore recommended that the Scheme of Delegation be amended to provide for the Authorised Officers to issue Temporary Stop Notices and to issue Enforcement Notices and Stop Notices as may be appropriate following a Temporary Stop Notice.

## **5. Direct Action**

5.1 Following the issue of an Enforcement Notice, Listed Building Enforcement Notice or Section 215 Notice (land adversely affecting amenity of neighbourhood) and failure to comply with the steps required by the Notice the Planning Authority may enter the land and take those steps and recover from the person who is the owner of the land any expenses reasonably incurred by them in doing so. The Scheme of Delegation should specifically recognise this and it is recommended that the prior Member notification procedure to be followed.

## **6. Other Changes**

6.1 The definition of Authorised Officer needs to be changed to reflect the present structure of Planning Services.

6.2 The duplication relating to proceedings should be removed and references to the taking of proceedings by the Authorised Officer consolidated

6.3 The amendment of the delegation where it is considered it would not be expedient to pursue enforcement action to reflect that contained in the Act.

6.4 To clarify the delegation relating to Discontinuance Notices and Amenity Notices.

## **7. Financial Implications**

7.1 None arises directly from this report.

## **8. Human resources Implications**

8.1 None directly results from this report.

## **9. Environmental Implications**

9.1 A strong and responsive planning enforcement function minimises the likelihood of serious environmental damage being done within the administrative area of the Council.

Documents used in the preparation of this report:

- The Council's Scheme of Delegation to Officers.
- Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005.
- ODPM Circular 02/2005 Temporary Stop Notice.
- The Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 (S.I. 2005 No. 206).
- Explanatory Memorandum to the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 (S.I. 2005 No. 206).

## **Annex 1 to the Report to the Development Control Committee 20th April 2005**

### **Revised Scheme Of Delegation**

#### **SCHEME OF DELEGATION IN RELATION TO PLANNING APPLICATIONS, LISTED BUILDING CONSENTS ENFORCEMENT AND RELATED MATTERS.**

##### **1. AUTHORISED OFFICERS**

1.1 In relation to this Scheme of Delegation the authorised officers shall be the Implementation Team Leader (Development Control and Listed Buildings) and any other officer duly authorised in writing by the said officers to act on their behalf.

##### **2. THE SCHEME**

###### **2.1 APPLICATIONS**

All decisions, responses or determinations arising in relation to applications, approval of reserved matters, prior approvals, consents and consultations, including requests for Tree Preservation Orders, submitted to or received by the Council in accordance with all Town and Country Planning, Listed Building and related or associated legislation (including subordinate legislation and any consolidation, re-enactment or amendment thereto) shall be delegated to the Authorised Officers(s) as specified above, except the following:

1. Any application for planning permission which, in the opinion of the Authorised Officers(s) is a departure from the Development plan and where the intended officer decision is permission / consent.

2. Any application for planning permission, approval of reserved matters, conservation area consent or listed building consent where a minimum of two Members of the Council (including one Member of the ward in which the application is sited) have requested, in writing within three weeks from the date of advertisement of the application, that the application be considered by Committee. Such requests shall be accompanied by a statement outlining sustainable planning reasons why the proposals need to be considered by Committee.

3. Any application of any type where the intended decision is to approve and where there are five or more letters of objection (excluding members of the same household), unless in the view of the Authorised Officer(s), the points raised by the objectors are withdrawn or dealt with by amendments to the application, or by the imposition of planning conditions or obligations, or are not planning matters.
4. Any application for planning permission, approval of reserved matters, conservation area consent or listed building consent, which involves the Council as landowner, applicant or agent.
5. Any application or consultation or like matter where the Authorised Officers(s) considers a decision should be taken by Committee.
6. In those cases where strict, statutory time limits are involved for making decisions or taking action, for example in cases of agricultural buildings, demolitions telecommunications determinations and notifications of works to trees in Conservation Areas, where non determinations within a set period automatically gives consent, any objection(s) received will be addressed by the Authorised Officer and at his discretion efforts will be made to resolve the objection(s) before the expiry period, but the existence of the objection(s) will not alter his authority in those instances to make a decision.

### **3. ENFORCEMENT**

#### **3.1 Delegation to Authorised Officers (as previously defined above)**

- 1) All matters relating to trees
- 2) All matters relating to failure to comply with any condition of a planning permission.
- 3) All matters relating to Advertisements being displayed without “express” consent under the Town and Country Planning Advertisement Regulations (removal of signage and prosecution).
- 4) All matters relating to Planning Contravention Notices.
- 5) All matters relating to statutory requisitions for information.
- 6) Authority to determine that the Council should not take enforcement action where the Authorised Officer(s) is satisfied that it would not be expedient to pursue enforcement action.
- 7) All matters relating to Temporary Stop Notices and subsequent Enforcement Notices and Stop Notices.

#### **3.2 Additional Delegation to Authorised Officers (subject to Notification Procedure to Local Ward Member(s) and Chairman of the Committee authorised to deal with the matter)**

- 1) Subject to 3.1.7 all matters relating to Enforcement Notices.

- 2) Subject to 3.1.7 all matters relating to Stop Notices, subject to prior consultation with the Council's Solicitor.
- 3) Subject to 3.1.7 all matters relating to Listed Building Enforcement Notices.
- 4) All matters relating to Discontinuance Notices referring to advertisements.
- 5) All matters relating to Amenity Notices referring to the proper maintenance of land.
- 6) The decision to pursue Direct Action following the issuing of an Enforcement Notice, Listed Building Enforcement Notice or Amenity Notice.
- 7) In relation to all the above (1 to 6) the notification procedure shall include a standard format summary report; in the event of no request for referral to Committee being received within a 7 day period the action will proceed under delegated authority. (The first day of the 7 day period shall be the date of the letter of notification and the 7th day shall be 7 calendar days thereafter).

#### **4. LEGAL PROCEEDINGS AND OTHER MATTERS**

##### **4.1 Delegation to Authorised Officers**

1. Authority to commence civil or criminal proceedings, howsoever arising, in relation to any planning enforcement or listed building matter.
2. Authority to enter onto any land or premises within the District, or authorise any other officer in writing to do so in pursuance of statutory rights of entry under the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 or any subsequent amending legislation.

##### **4.2 Delegation to the Solicitor to the Council**

1. In consultation with an authorised officer to agree the terms of any planning obligation, or any variation or revocation of the terms of any existing obligation or legal agreement, made pursuant to Section 106 of the Town and Country Planning Act 1990, Section 111 of the Local Government (Miscellaneous Provisions) Act 1982 or any other existing or previous enabling legislation, or subsequent amendments thereto.