

To: The Council

On: 21st December 2017

Report by: Director of Development & Housing Services

Heading: Planning – Scheme of Delegation Review

1. Summary

- 1.1 The Planning etc (Scotland) Act 2006 introduced a mandatory requirement for Councils to adopt a Scheme of Delegation which allows officers to take decisions on (a) applications for planning permission and (b) applications for consent, agreement or approval required by a condition imposed on a grant of planning permission.
 - 1.2 The Council, at its meeting on 28 September 2017 considered and agreed that a review of the existing Scheme of Delegation for planning applications be brought forward to this meeting for consideration.
 - 1.3 This report seeks to provide an assessment of the terms of the review that The Council asked to be considered and sets out alterations to the Scheme of Delegation which if acceptable will require the approval of Scottish Ministers prior to implementation.
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2. Recommendations

- 2.1 Members are asked to approve:
 - (i) That the Scheme of Delegation be amended as set out in Appendix 1 (by adding paragraphs (d), (e) (f) and (g) to the exceptions); and to make corresponding amendments to the terms of reference for the Communities Housing and Planning Policy Board;

- (ii) That in terms of the 'Planning Function', the Scheme of Delegation be amended to include "The Director of Development and Housing Services, the Head of Planning and Housing Services, and the Manager and Assistant Managers within Development Standards, and the Strategy and Place Manager and the Development Plans and Housing Strategy Team Leader as appointed officers, are authorised to determine" the specified matters.
 - (iii) That the Scheme of Delegation as amended, and insofar as it relates to planning functions, be referred to Scottish Ministers for approval and confirmation of the process will be reported to a future meeting of the Council.
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3. Background

- 3.1 The Planning etc (Scotland) Act 2006 introduced a mandatory requirement for the adoption of a Scheme of Delegation which allows Officers to take decisions on (a) applications for planning permission and (b) applications for consent, agreement or approval required by a condition imposed on a grant of planning permission.
- 3.2 The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 defines applications by category (depending on site area, floor space or number of housing units) as 'National' 'Major' or 'Local'. The current scheme delegates all matters other than those falling within the categories of 'national' or 'major' to an appointed officer (subject to the discretion of the officer to refer any application to the Board for determination; and subject to any application being subject to 'call-in' as set out in the Scheme of Delegation Protocol).
- 3.3 Where a planning authority propose to adopt a Scheme of Delegation, or where they propose to change an existing scheme, they must send a copy of the scheme to the Scottish Ministers and the planning authority must not adopt the scheme until it has been approved by Scottish Ministers.
- 3.4 The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 also requires that planning authorities must prepare a scheme of delegation at intervals no greater than every five years. Renfrewshire Council's Scheme of Delegation was last reviewed, and subsequently approved by Scottish Ministers, in October 2013.

4 Council Motion

- 4.1 The Council, at its meeting on 28 September 2017 considered and agreed that a review of the Scheme of Delegation for planning applications be brought forward to this meeting as follows:-

“The review is to consider amending the Scheme with regard to the Planning function and delegation and specifically but not exclusively the following:

Applications to be considered by the full board:

Any application subject of objection by a Community Council where those objections are relevant material considerations.

Any application which raises significant objections.

Any application which if approved would be contrary to the development plan.

The report to full Council should also consider the following change in process and its implications. The weekly planning list shall contain a schedule with the Planning Officer’s recommendation on an application.

At the end of a seven day period the recommendation will become the decision of the Planning Authority unless the Head of Housing and Development receives from a Councillor a written objection to the recommendation outlining relevant planning reasons and requesting that the application is referred to the Communities, Housing and Planning Policy Board for determination. Such requests must reach the Head of Housing and Development before the deadline shown in the weekly list /schedule.”

5 Observations and Comments

- 5.1 With regard to the proposition that “**Any application subject of objection by a Community Council where those objections are relevant material considerations**” should be referred to the Communities Housing & Planning Board; Council may wish to note that not all Community Council areas are ‘active’ and using this criterion, to trigger an application going for Board determination, would not offer an equitable opportunity across the entire Council’s area.
- 5.2 Similarly, Council may wish to consider the implications that a requirement for Board consideration may result from a blanket trigger of Community Council objection. This may draw in householder, minor commercial and industrial development which may not otherwise merit the scrutiny of the Communities Housing and Planning Policy Board.
- 5.3 Council may wish to consider whether there exists an alternative means of bringing an application before the Board, which would otherwise be a Delegated matter, and where there would be equity for those areas which do not have active Community Councils.
- 5.4 It is suggested that extending the element of the Scheme of Delegation Protocol, which enables a matter to be considered for Board decision where a letter signed by three members is received within 21 days of the application appearing on the Weekly List would be appropriate.
- 5.5 The implication of this is that the Scheme of Delegation would authorise the Convenor, in consultation with the Head of Planning and Housing, to

determine which matters would proceed to the Board for determination where such a request has been received.

- 5.6 With regard to “***Any application which raises significant objections***”, Council is asked to consider whether there is a risk of focussing on only those applications which have generated objections as opposed to the substance of the applications themselves.
- 5.7 An application which has attracted no adverse comment is not necessarily acceptable if it does not comply with the Development Plan or is not acceptable in any other material respects; similarly, an application which has attracted objections is not rendered unacceptable by this alone.
- 5.8 Setting specific numbers of representations for bringing applications before the Board e.g. more than ten or fifteen objections, could result in the threshold being perceived as a ‘target’ to be attained and one where, in a context of social media and multiple channels for making an objection, may not necessarily reflect genuine local or wider public concern.
- 5.9 Certain types of commercial activity, such as proposed hot food shops, can also generate objections which can often be attributed to concerns from competitors, rather than material planning matters. Similarly, “*raises significant objections*” is a subjective term which could relate to either the number of, or the substance of, the objections.
- 5.10 The Scheme of Delegation requires to be clear in setting out what does and does not fall within its ambit to ensure that both officers and elected members can take decisions which are *vires*.
- 5.11 An individual may perceive their single objection as significant if they are the only party which could be impacted by a proposal; whereas a large number of objectors, although many not immediately impacted by a proposal may feel their representations should carry greater weight by sheer force of numbers.
- 5.12 As such it is suggested that rather than relying on a subjective term related to a potentially arbitrary number of objections, the Scheme of Delegation should be revised, insofar as planning applications falling into the category of ‘local’ are concerned, to remove applications for residential development involving 10 houses or more on Greenfield sites, or on sites greater than 0.5 ha in area (equivalent to a ten-house development); or five houses or more on Green Belt sites, or on sites greater than 0.3 ha in area (equivalent to a five-house development).
- 5.13 These thresholds would coincide with the definitions of strategic / significant scales of development set out in Clydeplan 2017 and the Adopted Renfrewshire Local Development Plan Housing Land Supply Supplementary Guidance 2015 respectively.
- 5.14 Council should also give consideration to any other type of application which it is reasonable or proportionate to take out of the Scheme of Delegation.

Applicants for industrial, retail and commercial developments, particularly those with employment creating potential, generally seek certainty and speed of decision making in considering their investment decisions.

- 5.15 It is therefore suggested that no change be made to the current scheme so that those proposals seeking to contribute to sustainable economic growth continue to have a speedy and definite route for determination. Those developments of a retail, commercial or industrial nature falling within the category of 'major' or 'national' would continue to be presented to the Board for determination.
- 5.16 With regard to ***“Any application which if approved would be contrary to the Development Plan”*** Council may wish to consider whether it is appropriate to qualify this requirement. Many applications may conflict with the Development Plan in a minor or technical respect, for example, small scale retail and hot food uses outwith defined centres but on overall assessment would be otherwise acceptable.
- 5.17 Council is invited to consider that it would be beneficial to only require 'any application which if approved would be **significantly** contrary to the development plan' to be presented for Board determination; and also those where the proposals, if approved, would also be significantly contrary to the overall objectives, and would undermine the aims and strategic priorities, of the Local Development Plan.
- 5.18 With regard to consideration of changes to process to 're-introduce' the **publication of a weekly list of proposed decisions**, Council is reminded that as a consequence of the introduction of the local review procedure, it decided in 2009 that it was necessary to discontinue the arrangement of circulating on a weekly basis the list of reports in relation to applications which were to be determined under delegated powers.
- 5.19 Such a practice implied the acquiescence of members in the decision and therefore would be prejudicial to any subsequent review. Furthermore, the process operated when the decision making Board met on a three-weekly cycle; as opposed to the current ten / eleven week cycle.
- 5.20 Members should also be aware of the practical and procedural implications of a process where a 'decision' is delegated but subject to caveats. The most obvious issues arising relate to:
- (a) were a member to indicate disagreement with a 'proposed decision' and submits an objection outlining planning reasons for doing so, he/she would have in effect expressed a view on the merits of the application and in line with the Code of Conduct would debar themselves from participating in making a decision as a member of the Communities Housing and Planning Policy Board.
- (b) where a Member requests that a decision be taken out of the scheme of delegation, the Communities, Housing and Planning Policy Board will require to formally decide whether or not to agree to such a request; and if they do, they are required to record the reasons for doing so and to notify the applicant

of the reasons. Should the Board agree that the matter be one for the Board to decide, a report would require to be presented to and formally considered at a subsequent meeting of the Board and could therefore introduce significant delay.

(c) where an applicant is aggrieved by a decision made by an appointed officer under the scheme of delegation, either to refuse permission or to impose conditions; the current procedures result in the matter coming before Renfrewshire Council's Local Review Body for reconsideration and whose decision is final. Where these decisions are instead taken by the Communities, Housing and Planning Policy Board, the 'appeal' mechanism would no longer reside with members of Renfrewshire Council but would instead 'bypass' review at the local level, and become a matter for a Reporter appointed by the Scottish Government's Directorate of Planning and Environmental Appeals.

(d) There is a statutory obligation to determine 'local' applications within 8 weeks. There is also an ongoing obligation in terms of Scottish Government expectations on performance that the average time taken to process such applications is reduced and is less than the statutory maximum.

Where applications are to be 'called-in' after a 'proposed decision' has been indicated, the timescales for reaching decisions will be significantly extended and is likely to have a significant adverse effect on performance.

- 5.21 Current practice is to seek to conclude assessments and reach decisions on local applications at about week six or seven if possible; and to issue decision notices immediately thereafter. Depending on when a 'proposed decision' may be called-in, the decision making process could be extended by an additional two months.
- 5.22 Members should also be aware that if a decision is not made within the initial statutory two month period, applicants can seek an appeal on the basis of non-determination and this would again 'bypass' both the Communities, Housing and Planning Policy Board and/or the local review body and become a matter for a Reporter from the Directorate of Planning and Environmental Appeals.
- 5.23 Having regard to the foregoing, the Scheme of Delegation is considered to generally remain fit for purpose both in terms of decision making accountability and consideration of third party representations; and in terms of optimising performance and fulfilling applicants expectations of a timeous decision.
- 5.24 The applications which have proved more contentious have generally related to new residential development on undeveloped land and it is recommended that the scheme of delegation be amended such that these types of development be presented to the Communities Housing and Planning Policy Board for determination.
- 5.25 Furthermore, to ensure that members are made aware of those decisions which continue to be made under delegated authority, it is recommended that

a list be published fortnightly which details those decisions which have been taken and that this list be circulated to all elected members.

- 5.26 As a result of continuing reviews of structures, vacant posts and officer responsibilities, the opportunity should also be taken to extend the definition of 'Appointed Officer' for the purposes of delegated authority.

Implications of the Report

1. **Financial** – None.
2. **HR & Organisational Development** - None
3. **Community Planning – Jobs and Economy** – Speed and certainly in statutory decision making can assist in encouraging sustainable economic growth.
4. **Legal** – None
5. **Property/Assets** – None.
6. **Information Technology** – None.
7. **Equality & Human Rights** – The recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report the primary legislation and secondary regulations have been subject to Equality Impact assessment. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health & Safety** – None.
9. **Procurement** – None.
10. **Risk** – None.
11. **Privacy Impact** – None.
12. **Cosla Policy Position** – N/A

List of Background Papers

- (a) Background Paper 1: Town and Country Planning (Scotland Act 1997.
Background Paper 2: Town and Country Planning (Schemes of
Delegation and Local Review Procedure) (Scotland) Regulations 2013.
Background Paper 3: Scottish Government Circular 5/2013 'Schemes
of Delegation and Local Reviews'.

The foregoing background papers will be retained within Development and Housing Services for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is David Bryce, Development Standards Manager, 0141 618 7892, david.bryce@renfrewshire.gov.uk

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APPENDIX 1

- “3. All planning and related decisions, including the signing and service of notices, within the scope of the Planning (Hazardous Substances) (Scotland) Act 1997.

Exceptions

The above delegations are subject to the exception of the following categories of application, which are for decision by elected members, as follows:

To be determined by the Council:

- (a) national development as specified in the National Planning Framework; and
- (b) major developments which are significantly contrary to the local development plan.

To be determined by a Board of the Council:

- (a) which the Planning authority decides to determine which would otherwise fall to be determined by a person appointed to do so under this scheme;
- (b) major developments as set out in the Schedule to the Town and Country Planning (Hierarchy of Developments) (Scotland) regulations 2009;
- (c) listed building consent for demolition of listed buildings and conservation area consent for demolition of a building in a conservation area;
- (d) applications involving residential development of 10 or more units on greenfield or undeveloped land; or on a site greater than 0.5 ha which is greenfield or undeveloped land;*
- (e) applications involving residential development of five or more units on sites within the greenbelt; or on a site greater than 0.3 ha which is within the green belt;*
- (f) applications which if approved are considered to be significantly contrary to the Local Development Plan and also those applications which, if approved, would be significantly contrary to the overall objectives, and would undermine the aims and strategic priorities, of the Local Development Plan.*
- (g) where, within 21 days of an application appearing on the Weekly List, a letter signed by three members is received, and where it sets out reasons why the matter should go before the Board, the Convenor in consultation with the Head of Planning and Housing shall consider such a request and shall be authorised to decide whether or not to agree to the request.”*