

# WARWICK DISTRICT COUNCIL

**TO: DEVELOPMENT COMMITTEE - 19<sup>TH</sup> JULY 1999**

**SUBJECT: REVISION TO DELEGATION AGREEMENT**

**FROM: HEAD OF PLANNING**

---

## 1. PURPOSE OF REPORT

The matter of revision of the Delegation Agreement introduced in April 1998 was reported to Development Committee on 18<sup>th</sup> January 1999. At that time, it was resolved to defer consideration of any changes to the agreement to enable consultation to take place with Parish and Town Councils. The consultation process has now been completed.

## 2. BACKGROUND

- 2.1 It is now possible to summarise for members the overall pattern of cases on Part II of the Plans Sub-Committee Agenda which comprise those applications not able to be dealt with under delegated powers under the presently operative criteria, over the twelve month period that the delegated system has been in operation.

	No. of Reports	No. of cases deferred by members
April - June quarter	92	4
July - September quarter	150	13
October - December quarter	149	13
January - March quarter	121	5
<b>TOTAL</b>	<b>512</b>	<b>35</b>

- 2.2 As a result of the current scheme, there has been a continued pattern of large Plans Sub-Committee agendas over the year. Since one of the main objectives of the delegated system is to put before members the more significant or controversial applications where there are competing arguments and/or where objections have been raised it is relevant to continue to look at ways of improving the system. In my report to January Development Committee, I put forward options for members to consider which would have the effect of reducing the size of agendas, whilst still ensuring that the categories of cases where members had concerns would remain on the agenda for their full attention.

- 2.3 Members' main concerns at the January meeting were that it was too soon to change the agreement that had been operative from April 1998 and that Parish and Town Councils, in particular, would be affected by any further changes so soon after the introduction of the agreement, which itself had brought with it a number of changes to administrative arrangements for the Parish and Town Councils.

### **Scope and Impact of the Agreement**

- 2.4 I consider that the delegation agreement has brought many positive benefits to the delivery of the development control service. These can be summarised as follows:-
- A. the abandonment of the long established practise of updating recommendations on the day of the meeting.
  - B. Agendas that focus on the more significant applications and exclude the routine cases that do not give rise to public comment.
  - C. Issuing of decisions on small scale developments eg. householder applications, within a shorter timescale without those applications being held up awaiting a Committee agenda.
  - D. Provision of balanced reports for members on all Committee cases.
- 2.5 My overall assessment of the impact of the agreement as currently operating is that it is working satisfactorily, although the number of cases having to be reported for Committee decision remains high.

### **Consultations with Parish and Town Councils**

- 2.6 A questionnaire has been sent to each Parish and Town Council relating to the Development Control Service, including the administrative impact of the delegation arrangements, together with a summary sheet relating to the revised delegation agreement, incorporating a request for comments on its contents. Following the sending out of the questionnaire, the issue of delegation was also included on the agenda of the Annual Planning Seminar for Parish and Town Councils held on 24<sup>th</sup> June. Representatives of five local Councils attended the seminar.
- 2.7 In relation to the sections of the questionnaire relating to the delegation arrangements, local councils were asked:-
- A. Whether the new system of forwarding applications to local Councils individually following receipt was preferable to the previous system of sending applications in batches every week.
  - B. Whether the new, more frequent consultation arrangements accompanying the delegation system have presented difficulties.
- 2.8 Fourteen of the twenty-one questionnaires sent out were responded to. In relation to A, twelve out of the fourteen respondents stated they preferred the new system of sending out applications individually. In relation to B, nine respondents considered the new consultation arrangements had not presented them with difficulties, whilst five Councils considered difficulties had been caused, primarily associated with the need for more frequent meetings or difficulties of circulation to meet deadlines.
- 2.9 At the Annual Planning Seminar held on 24<sup>th</sup> June, it was emphasised that any revisions to the current delegation

agreement would not affect current consultation arrangements and would not alter one of the fundamental safeguards of the original agreement, i.e. the referral to Committee of applications where objections had been received from local Councils (or others) where the Head of Planning considers permission should be granted.

2.10 No adverse comments were received from local Councils at the Seminar itself. In relation to the written request for comments on the proposed changes, two written replies have been received. In summary the key points in those two responses are:-

- The present arrangements work satisfactorily and should remain unchanged.
- Decisions on refusals of applications should be made by elected members.
- Members of the District Council's Plans Sub-Committee and Town/Parish Councils must not be denied the opportunity to represent the views of both local residents and applicants.

2.11 The last two responses seem to reflect an in-principle opposition to the idea of extended delegated powers and:-

- appear not to have taken into account the fundamental principle which underpins the whole concept which is that Members control the whole process through their right of referral to Committee of any application, and
- reflect a lack of awareness that in many respects greater influence is now exercised by local Councils on the decision making process since their views on any application are now the crucial factor in the determination of many cases.

### 3. THE PROPOSED REVISIONS TO THE AGREEMENT

3.1 In the previous reports to Development Committee, I put forward for Members a revised agreement which was not based on a lengthy set of criteria defining the delegated categories, but was based on a more simplified system by which any category of application could potentially be delegated, subject to a number of carefully framed safeguards, based on those advocated by the National Planning Forum and incorporating this Council's own originally approved safeguards.

3.2 Looking at the experience with the operation of the agreement during 1998-99, of the 512 Part II Committee reports, the original recommendation was accepted in 467 cases (94% of cases). Of the 35 cases where Members requested further information, 31 recommendations were accepted. In **all** cases where Members **refused** permission on a Part II item against officer advice, the applications are ones which would automatically have been referred to Committee under the new arrangements proposed by virtue of the fact that objections had been received.

3.3 In relation to Part II cases and Principal Items, some concern has been expressed by Members about the criteria for selecting Principal Items. The currently approved criteria are reproduced as Appendix B.

3.4 In relation to the revised agreement now being put forward, the main impact of the new agreement would be:-

- to reduce the number of refusal cases reported to Committee.

- to reduce the reported number of cases relating to retrospective applications.
- to reduce the number of reported cases that currently do not fall into a defined delegated category.
- to allow a greater number of cases to be dealt with under delegated powers so long as approved policies are not “prejudiced”.

In broad terms, the emphasis of the Part II reports under the revised suggested agreement would be on cases where objections have been received and the Head of Planning considers permission can be granted, i.e. where there are competing arguments which need to be weighed in the decision making process.

- 3.5 It is accepted that increased delegated powers to officers to issue refusals could be perceived as curtailing the rights of applicants. Any refusal issued would be on the basis that there was a clear conflict with policy and guidance already put in place by Members through the statutory local plan process and Council approval. It is of course the case that planning legislation requires that applications be determined in accordance with policy unless material considerations indicate otherwise. As part of the existing Development Control service, applicants/agents are always contacted prior to any recommendation to refuse going forward to a Committee or under delegated powers. Applicants rights are therefore protected in this area under existing and proposed arrangements.
- 3.6 A further aspect of refusals of permission under delegated powers is that on occasions, refusal decisions on cases that are contrary to policy may be issued even if no objections are received from local Councils or neighbours. This has been the case with the current arrangements and the only change is that this may occur more frequently if the suggested revised agreement were to be accepted.
- 3.7 In relation to grants of permission for development which does not “prejudice” approved policy, the revised agreement as set out in Appendix A refers to **material** departures from policy. In the context of government guidance, “departures” are proposals which “significantly prejudice the implementation of” any policy or proposal in the development plan. The term “material departure” is therefore used so that a logical approach is taken to the assessment of these proposals, rather than simply deciding whether there is a technical infringement of a policy or guidance which does not result in a material effect which undermines the reasoning behind the policy.

This change is requested in order to bring a greater degree of flexibility in operating the agreement and is considered to represent a more logical basis for assessment of cases in relation to policy, based on the departure definition set out in current legislation.

#### 4. CONCLUSIONS

- 4.1 The current arrangements have now been operating for over a year without significant problems being caused. The number of cases reported to Committee for decision, however, remains high, resulting in large agendas and delays in issuing many straight-forward decisions.
- 4.2 Additional delegated powers, as set out in Appendix A, would be likely to result in an improved customer service and a reduced size of Agendas for Members, whilst still fully protecting the rights of consultees, local Councils or others to influence the decision making process.
- 4.3 The most significant change in the arrangements being suggested is considered to be the increased number of refusals of permission potentially able to be issued under delegated powers. Given the right of appeal that exists in such cases (and the established practice of always contacting applicants/agents about cases being recommended for refusal in order to explore the possibility of the refusal reason being able to be resolved), it is not considered that an extension of delegated powers on refusal cases is unreasonable. Such decisions would of course be based on assessment against development plan policy or supplementary planning guidance which has been approved by the Council following public consultation.

#### 5. RECOMMENDATION

- 5.1 That Development Committee recommends to Full Council that the revised Delegation Agreement for Development Control as set out in Appendix A be adopted as from 1<sup>st</sup> October 1999.
- 5.2 That a further report be placed before Development Committee on the operation of the revised agreement after a six month period of operation.

J. ARCHER  
HEAD OF PLANNING

#### BACKGROUND PAPERS

6. Previous report to Development Committee - 18<sup>th</sup> January 1999.
7. Development Control Delegation Agreements National Planning Forum 1997.

**Contact Officer:** Mr. J. A. Edwards  
Tel: (01926) 450000

**Areas in District  
Affected:**

[S:\Dele99.wpd]

**APPENDIX A**

## SCHEME OF DELEGATION OF PLANNING DECISIONS

1. That, with effect from 1st October 1999, under the powers contained in Section 101 of the Local Government Act 1972, Warwick District Council delegates to the Head of Planning, or such officer(s) of the Planning Business Unit as he may designate, the following powers. The powers delegated shall only be exercised after ensuring that all statutory requirements have been complied with and after considering all representations received.
2. The powers delegated shall be:-
  - 2.1 To APPROVE all types of applications submitted under the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) subject to such condition(s) as the Head of Planning may deem it appropriate to impose.

PROVIDED THAT any decision –

- 2.1.1 does not constitute a material departure from any policy or proposal within the relevant development plan (whether approved, adopted or draft) or any supplementary planning guidance adopted or approved by the Council as local planning authority.
- 2.1.2 does not include any application in respect of which adverse representations on material planning grounds have been received from a member of the District Council, Parish or Town Council, local M.P. or third party.
- 2.1.3 does not include any application submitted by, or on behalf of, a Councillor or former Councillor or employee or former employee of the Council, or the spouse/partner of any such person.
- 2.1.4 does not include any application submitted by Warwick District Council or Warwickshire County Council, except for the approval of routine minor developments.
- 2.1.5 does not include any application which is proposed to be granted but subject to a legal agreement or undertaking under Section 106 of the Town and Country Planning Act 1990.
- 2.1.6 does not include any application where a Councillor of Warwick District Council has requested in writing a Committee referral within the agreed consultation period, i.e. 14 days from issue of the relevant weekly list.
- 2.1.7 does not include any application where the Head of Planning considers it is prudent not to exercise delegated authority in the particular circumstances of the case.
- 2.2 To REFUSE all types of application submitted under the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), (including any application where objection has been received

from any consultee or member of the public) where the Head of Planning is satisfied that the proposals are contrary to the provisions of the relevant development plan (whether approved, adopted or draft) or to any supplementary planning guidance adopted or approved by the Council as local planning authority.

PROVIDED that any decision –

- 2.2.1 does not include any application where a Councillor of Warwick District Council has requested in writing a Committee referral within the agreed consultation period, i.e. 14 days from issue of the relevant weekly list.
- 2.2.2 does not include any application where the Head of Planning considers it is prudent not to exercise delegated authority in the particular circumstances of the case.

### **Selection of Principal Items**

Criteria for selection of Principal Item reports are contained within the report to Plans Sub-Committee dated 14<sup>th</sup> March 1995 in respect of Recommendation 28 of the Barrow Report. The criteria provide guidance for officers and for Members.

The criteria for selection of Principal Items by the Head of Planning are:-

- (a) Where the Head of Planning considers there are material considerations which indicate that an application should be either refused or approved contrary to Local Plan policy.
- (b) Where a proposal is likely to have a major impact upon the character of a locality, unless the application is to be refused.
- (c) Where a proposal generates significant public interest or concern.
- (d) Where at the discretion of the Head of Planning such circumstances exist so as to warrant a Principal Item being prepared. The special circumstances will be referred to within each Principal Item so prepared.
- (e) Where the applicant is an Officer, former Officer or elected Member/former elected Member of the Council.

Applications made by a Council Committee will be treated in exactly the same way as other applications and there will be no automatic Principal Item.

In relation to selection of items by Members, the report stated:-

“That if Members require further information on an application, this be requested in advance by telephone or in written form from the Planning Department before the Plans Sub-Committee meeting itself. This will enable information to be provided at the Plans Sub-Committee and often avoid the need for a deferral and Principal Item simply to provide a further piece of information not readily available during the evening of the meeting.

It will, of course, still be appropriate for Members to call for a Principal Item where they consider that a proposal raises legitimate Planning issues of significances or over which concern has been expressed that they feel requires a more extensive response. Where this is done prior to Committee then it must be done sufficiently early to prevent a deferral.”