

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	Cabinet Member for Economic Development, Planning and Transportation.
2.	Date:	Monday, 19th April, 2010
3.	Title:	Amendments to the Scheme of Delegation for the Director of Planning and Regeneration
4.	Programme Area:	Environment and Development Service

5. Summary

To consider proposed amendments to the Council's Scheme of Delegation relating to powers delegated to the Director of Planning and Regeneration in relation to the Development Control functions of the Service.

6. Recommendations

- (i) **That the Cabinet Member notes the proposed changes to the Scheme of Delegation.**
- (ii) **That the reviewed Scheme of Delegation be presented to the Planning Board, Cabinet and Council for formal approval, being a change to Council policy.**

7. Proposals and Details

The Scheme of Delegation was last amended by the Council in 2007 and the current report sets out further changes proposed to the scheme. The proposed revised Scheme is attached at Appendix 1, and the existing Scheme is attached at Appendix 2.

The changes proposed are primarily those of clarification and to address some anomalies that occur under the current Scheme. The main changes can be summarised as follows:

- To determine applications (where no objections) for the erection of up to 9 dwellings on sites allocated for residential purposes (previously it was over 5 dwellings).
- The approval of reserved matters for up to 14 dwellings (previously up to 25 dwellings). The Scheme would reduce the level at which reserved matters applications for residential schemes have to be referred to Members, due to the reduction in the level required to trigger affordable housing provision. The level would drop from 25 units to 14, and as such any reserved matter application for 15 or more dwellings would now be referred to Members.
- The determination as to whether outline applications can be determined under delegated powers now includes reference to the accompanying design and access statements and their indication of upper limits on numbers of units/floorspace. For example, where the design and access statement indicates that 10 or more dwellings would be provided on the site, the application would be reported to Board.
- The erection of up to 14 dwellings on land where there has been an approval within the previous 3 years (previously up to 10).
- Applications for up to 5 dwellings submitted by the Council (NEW).
- Applications for Hazardous Substance Consent, unless objection has been received from the Health and Safety Executive or Environment Agency and it is proposed to grant consent (NEW).
- Applications for non-material amendments (the Council has 28 days to determine if amendments to existing permissions can be dealt with as non-material (or 'minor') amendments where no further application for planning permission would be required) (NEW).
- Various enforcement powers not originally included in the Scheme of Delegation (such as power to issue a tree replacement notice, power to issue a Discontinuance Notice, and power to issue a Section 215 Notice requiring owner to clear up land). The S215 Notice was previously removed from the Scheme as the function was taken on by the Director of Housing and Neighbourhoods, who would continue to be the primary user of the power, though it will allow the

Director of Planning and Regeneration to once again pursue this option where appropriate.

8. Finance

There are no financial implications relating to the proposed changes to the Scheme of Delegation.

9. Risks and Uncertainties

The revised Scheme will avoid possible challenges to the determination of planning applications

10. Policy and Performance Agenda Implications

The Scheme of Delegation continues to contribute to the Council's performance figures relating to the determination of planning applications. Certain anomalies have arisen as a result of working with the current Scheme and further improvements/clarifications have also been identified. To address these issues it is recommended that the Scheme is further amended.

11. Background Papers and Consultation

The proposed and existing Schemes are attached at Appendix 1 and 2 respectively.

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APPENDIX 1 – PROPOSED SCHEME OF DELEGATION

(A) Development Control

Delegated powers to Director of Planning and Regeneration Service relating to the Development Control functions of the Service are also exercised by the Planning Manager, Area Development Control Managers, and the Planning Delivery Manager.

General

Approve applications within Sections 1 – 6A except where objections (other than anonymous objections) have been received, (see section 9.1 below).

Refuse applications within Sections 1 – 6A even where objections have been received, other than where application is retrospective (see section 9.2 below).

The approval/refusal of applications under Section 6 (B), irrespective of the number of letters of objection.

Refuse an application where the plans are inadequate or supporting information is insufficient and this is the primary reason for refusal.

Under Article 25 of the General Development Procedure Order 1995, to ‘finally dispose of’ applications in accordance with the terms of the Order.

1. Applications for householder development:

- 1.1 Alterations or extension to dwelling houses.
- 1.2 Erection of buildings within the curtilage of residential properties, to include garages etc.
- 1.3 Erection of a fence, wall, gate, or other means of enclosure.
- 1.4 Formation of a vehicular access onto a classified road.
- 1.5 A minor householder development not falling within the above criteria.

2. Applications for residential development:

- 2.1 Conversion of a building to a dwelling house.
- 2.2 Conversion of a building to up to 9 flats.
- 2.3 The erection or conversion of up to 14 dwelling houses on land for which planning permission has been granted within the past 3 years.
- 2.4 The approval of reserved matters (up to 14 units) in respect of dwelling houses or of flats.

2.5 Erection of up to 9 dwellings or 9 flats within an area allocated for residential development in the Unitary Development Plan (including Mixed Use allocations that include C3 residential in the 'mix').

2.6 Outline applications where the accompanying Design and Access Statement indicates an upper limit of 9 dwellings within an area allocated for residential development in the Unitary Development Plan (including Mixed Use allocations that include C3 residential in the 'mix').

3. Applications for commercial, industrial, retail, leisure or recreation development:

3.1 A modification or construction of a new shop front, including installation of security shutters.

3.2 A minor change of use or other minor development.

3.3 The display of an advertisement (Section 220 of the Town and Country Planning Act 1990).

3.4 Outline applications where the accompanying Design and Access Statement indicates an upper overall floorspace limit of 2,000 square metres or changes of use of land with a site area up to 2 hectares, both where the site is allocated as such in the Unitary Development Plan (including Mixed Use allocations that includes the relevant use within the 'mix').

3.5 The change of use of buildings or erection of new buildings and reserved matters relating to such development or related mixed use schemes, all where the total floor area proposed is under 2,000 square metres, on land either currently used for that purpose, or allocated as such within the Unitary Development Plan (including Mixed Use allocations that includes the relevant use within the 'mix').

3.6 The alteration or extension (up to 2,000 square metres) of premises within an area allocated for such use in the Unitary Development Plan (including Mixed Use allocations that includes the relevant use within the 'mix') or in an existing area or complex containing such uses.

3.7 The erection of overhead electricity lines up to 66KV, and installation of statutory undertakers equipment, which is not classed as permitted development.

3.8 Any other minor development not referred to above.

4. Applications submitted by the Council

4.1 Applications submitted by the Council, either solely or in conjunction with a partnership body, for small scale development, such as small new buildings/extensions to Council buildings (up to a floor area limit of 300 square metres), formation of related parking areas, temporary buildings, fencing, etc.

4.2 Up to five houses.

5. Applications for Minerals and Waste:

5.1 Except where reserved to the Planning Board, the determination or amendment of reserved matters, in an application for planning permission, relating to schemes of working, restoration and aftercare.

5.2 The siting of plant, machinery, buildings, structures or erections, proposed by a minerals undertaker under Part 19 of Class B of the Town and Country Planning (General Permitted Development) Order 1995.

5.3 The siting of plant, machinery, buildings, structures or erections, proposed by the Coal Authority or a licensed operator on an authorised site under Part 20 of Class C of the Town and Country Planning (General Permitted Development) Order 1995.

6. Other application types:

(A)

6.1 Applications for Conservation Area Consent, relating to development falling within the scheme of delegation.

6.2 Applications for Listed Building Consent for Grade 2 Listed Buildings for development falling within the scheme of delegation.

6.3 Variation or discharge of conditions (Section 73 and Section 73A of the Town and Country Planning Act 1990) on previous approvals not determined by the Planning Board.

6.4 Applications to prune and fell trees covered by Tree Preservation Orders.

6.5 Applications for prior approval (as set out in the Town and Country Planning (General Permitted Development) Order 1995) including those relating to agricultural development, demolition, and telecommunications apparatus.

6.6 Applications for Hazardous Substance Consent, unless objection has been received from the Health and Safety Executive or Environment Agency and it is proposed to grant consent.

6.7 Applications for non-material changes to planning permission.

(B)

6.8 Power to determine certificates of lawfulness of existing and proposed use/operations in respect of Sections 191 and 192 of the Town and Country Planning Act 1990.

6.9 Applications to prune and fell trees subject to 6 weeks notice within a Conservation Area

6.10 Applications for works to, and the removal of historic hedgerows

7. Miscellaneous

7.1 The determination of the need for an Environmental Impact Assessment and screening and scoping, in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended).

7.2 The carrying out of statutory publicity and consultation.

7.3 The determination of whether an application constitutes a departure from the Development Plan.

7.4 The undertaking of negotiations to conclude an agreement under Section 106 or S106A of the Town and Country Planning Act 1990.

7.5 The making of Tree Preservation Orders under S198 of the Town and Country Planning Act 1990.

7.6 The confirmation of Tree Preservation Orders where no objections have been received.

7.7 Power to decline to determine applications for planning permission, under Section 70A and 70B of the Town and Country Planning Act 1990.

7.8 The approval and discharge of details required by a planning condition, unless minuted by Planning Board that they wish to agree the details.

7.9 The taking of all necessary steps in relation to appeal proceedings, to include steps to settle the same.

7.10 Responses to consultations from other Local Planning Authorities on planning applications covered under this Scheme of Delegation.

7.11 The determination as to whether a planning application submitted constitutes permitted development.

8. Planning Enforcement (see also Section 9)

8.1 Power to authorise entry onto land (under Section 196A and S214B of the Town and Country Planning Act 1990).

8.2 Power to seek a warrant for entry onto land in the magistrates court (Section 196B and S214C) of the Town and Country Planning Act 1990).

8.3 Power to issue a requisition for information (Section 330 of the Town and Country Planning Act 1990).

8.4 Power to issue a planning contravention notice (Section 171C of the Town and Country Planning Act).

8.5 Power to issue a breach of condition notice (Section 187A of the Town and Country Planning Act).

8.6 Power to issue a tree replacement notice (Section 207 and 209 of the Town and Country Planning Act 1990).

8.7 Power to issue a hedgerow retention notice and a hedgerow replacement notice under the requirements of the Hedgerow Regulations 1997.

8.8 Where there is a breach of planning control, the determination as to whether it is expedient to take action.

8.9 Power to authorise compliance with Criminal Procedure and Investigations Act 1996 when pursuing prosecutions.

8.10 Power to issue a Discontinuance Notice pursuant to Regulation 8 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

8.11 Power to issue notice requiring land/buildings to be maintained (S215 of the Town and Country Planning Act 1990).

8.12 Power to authorise surveillance under the Regulation of Investigatory Powers Act 2000 (this power only exercised by the Director of Planning or the Planning Manager).

8.13 Power to issue a Completion Notice under S94 of the Town and Country Planning Act 1990.

9. In consultation with the Chair and Vice Chair

9.1 The approval of an application under sections 1 - 7(A) of the Scheme of Delegation where no more than 5 objections have been received (separate objections from separate addresses – separate names on petitions are only counted if they are provided with an address).

9.2 The refusal of a retrospective application, irrespective of whether objections have been received, to allow possible enforcement action to be considered, other than proposals falling within Schedule 1 of the Environmental Impact Assessment Regulations.

9.3 The issue of a planning Enforcement Notice, Listed Building Enforcement Notice, Temporary Stop Notice or Stop Notice.

9.4 The pursuance or not of a prosecution in respect of:

- Failure to return a requisition for information (S330 Notice) or planning contravention notice.
- Failure to comply with a planning/listed building enforcement notice/ temporary stop notice/ stop notice or breach of condition notice.
- The unauthorised display of advertisements.
- Unauthorised works to listed buildings.

- Unauthorised works to a protected tree/tree within a Conservation Area.
- Failure to comply with requirements of a S215 Notice.
- Any other offence under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990.

9.5 The authorisation of default works under relevant Sections of the Town and Country Planning Act.

9.6 To agree Section 106 Agreements of a minor nature (such as relinquishing an extant permission) and agree applications for amendments of a minor nature to completed S106 Agreements or amendments of a minor nature to the Heads of Terms of S106 Agreements endorsed by Board but not as yet signed.

(Note: Where agreement cannot be reached between Officers and Chairman and Vice Chairman under Sections 9 the matter shall be referred to the Planning Board.)

APPENDIX 2 – EXISTING SCHEME OF DELEGATION

Development Control

The powers are limited to the following extent

- Approve Applications under sections 1-6 below, except where objections have been received.
- Refuse applications under sections 1-6 below even where objections have been received, other than where more than 5 objections received or where application is retrospective (see 9 below).
- Refuse an application where the plans are inadequate or supporting information is insufficient and this is the primary reason for refusal.
- Under Article 25 of the General Development Procedure Order 1995, to 'finally dispose of' applications where further information has been requested and the time period for appealing against non-determination of the application has elapsed.

1. Applications for householder development

- 1.1 Alterations or extension to dwellinghouses
- 1.2 Erection of buildings within the curtilage of residential properties, to include garages etc.
- 1.3 Erection of a fence, wall, gate, or other means of enclosure
- 1.4 Formation of a vehicular access onto a classified road
- 1.5 A minor householder development not falling within the above criteria

2. Applications for residential development

- 2.1 Conversion of a building to a dwellinghouse
- 2.2 Conversion of a building to flats.
- 2.3 The erection or conversion of up to 10 dwellinghouses on land for which planning permission has been granted within the past 3 years.
- 2.4 The approval of reserved matters (up to 25 units) in respect of dwellinghouses or of flats.
- 2.5 Erection of up to five dwellings or five flats within an area allocated for residential development in the Unitary Development Plan (including Mixed Use allocations that include C3 residential in the 'mix').
- 2.6 Outline applications with a site area up to 0.2 hectares in area within an area allocated for residential development in the Unitary Development Plan (including Mixed Use allocations that include C3 residential in the 'mix').

3. Applications for commercial, industrial, retail, leisure or recreation development

- 3.1 A modification or construction of a new shop front, including installation of security shutters.
- 3.2 A minor change of use or other minor development.
- 3.3 The display of an advertisement (section 220 of the Town Centre Planning Act, 1990), including on Listed buildings.

- 3.4 Outline applications with a site area up to 2 hectares where the site is allocated as such in the Unitary Development Plan (including Mixed Use allocations that includes the relevant use within the 'mix').
- 3.5 The erection of new commercial, industrial, leisure or recreation development and reserved matters relating to such development or related mixed use schemes where the total floor area proposed is under 2,000 square metres, on land either currently used for that purpose, or allocated as such within the Unitary Development Plan (including Mixed Use allocations that includes the relevant use within the 'mix').
- 3.6 The alteration or extension (up to 2,000 square metres) of commercial, industrial, retail, leisure or recreation premises within an area allocated for such use in the Unitary Development Plan (including Mixed Use allocations that includes the relevant use within the 'mix') or in an existing area or complex containing such uses.
- 3.7 The erection of overhead electricity lines up to 66KV, and installation of statutory undertakers equipment, which is not classed as permitted development.

4. Applications submitted by the Council

- 4.1 Applications submitted by the Council, either solely or in conjunction with a partnership body, for small scale development, such as small new buildings/extensions to Council buildings (up to a floor area limit of 300 square metres), formation of related parking areas, temporary buildings, fencing, etc.

5. Minerals and Waste

- 5.1 Except where reserved to the Planning Board, the approval or amendment of reserved matters, in an application for planning permission, relating to schemes of working, restoration and aftercare.
- 5.2 The approval of siting of plant, machinery, buildings, structures or erections, proposed by a minerals undertaker under Part 19 of Class B of the Town and Country Planning (General Permitted Development) Order 1995.
- 5.3 The approval of siting of plant, machinery, buildings, structures or erections, proposed by the Coal Authority or a licensed operator on an authorised site under Part 20 of Class C of the Town and Country Planning (General Permitted Development) Order 1995.

6. Other Application Types

(A)

- 6.1 Applications for Conservation Area Consent, relating to development falling within the scheme of delegation.
- 6.2 Applications for Listed Building Consent for Grade 2 Listed Buildings for development falling within the scheme of delegation.
- 6.3 Variation of conditions on previous approvals not determined by the Planning Board.
- 6.4 Applications to prune and fell trees covered by Tree Preservation Orders.
- 6.5 Applications for prior approval for agricultural development and demolition.
- 6.6 Applications for prior approval for telecommunications apparatus.
- 6.7 Applications for prior approval for demolition and restoration work

(B)

- 6.8 Power to determine certificates of lawfulness of existing and proposed use/operations in respect of Sections 191 and 192 of the Town and Country Planning Act 1990.
- 6.9 Applications to prune and fell trees subject to 6 weeks notice within a Conservation Area
- 6.10 Applications for works to, and the removal of historic hedgerows

7. Planning Enforcement (see also section 9 below)

- 7.1 Power to authorise entry onto land (section 196A of the Town and Country Planning Act 1990)
- 7.2 Power to seek a warrant for entry in the magistrates court (Section 196B of the Town and Country Planning Act).
- 7.3 Power to serve a requisition for information (Section 330 of the Town and Country Planning Act).
- 7.4 Power to serve a planning contravention notice (Section 171C of the Town and Country Planning Act).
- 7.5 Power to serve a breach of condition notice (Section 187A of the Town and Country Planning Act).
- 7.6 Where there is a breach of planning control, the determination as to whether it is expedient to take action.

8. Miscellaneous

- 8.1 The determination of the need for an Environmental Impact Assessment and screening and scoping, in accordance with the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999.
- 8.2 The carrying out of statutory publicity.
- 8.3 The agreeing of minor amendments to approved plans.
- 8.4 The determination of whether an application constitutes a departure from the Development Plan.
- 8.5 The undertaking of negotiations to conclude an agreement under Section 106 of the Town and Country Planning Act 1990.
- 8.6 The making of Tree Preservation Orders under section 198 and 201 of the Town and Country Planning Act
- 8.7 The confirmation of Tree Preservation Orders where no objections have been received.
- 8.8 Power to decline to determine applications for planning permission, under Section 70A of the Town and Country Planning Act.
- 8.9 The approval of details required by a planning condition.

9. In consultation with the Chair and Vice Chair of the Planning Regulatory Board

- 9.1 The service of a planning enforcement or (Temporary) Stop notice.
- 9.2 The pursuance of a prosecution in respect of:-
 - Failure to return a requisition for information/planning contravention notice.
 - Failure to comply with an enforcement notice.

- Failure to comply with a Breach of Condition Notice.
 - The unauthorised display of signage.
 - Unauthorised works to listed buildings.
 - Unauthorised works to a protected tree.
- 9.3 The authorisation of default works under Section 178 of the Town and Country Planning Act.
- 9.4 The approval of an application under sections 1-6 (A) of the Scheme of Delegation where no more than 5 objections have been received (separate objections from separate addresses).
- 9.5 The approval/refusal of applications under section 6 (B). irrespective of the number of letters of objection.
- 9.6 The refusal of a retrospective application, irrespective of whether objections have been received, to allow possible enforcement action to be considered, other than proposals falling within Schedule 1 of the Environmental Impact Assessment Regulations.
- 9.7 Responses to consultations from other Local Planning Authorities on planning applications covered under this scheme of delegation.
- 9.8 To agree amendments of a minor nature to completed S106 Agreements.