Development Management
Practice Note

Councils Schemes of Delegation

April 2015
Preamble

This Development Management Practice Note is designed to guide planning officers and relevant users through the formulation of schemes of delegation and deals primarily with procedures as well as good practice. It forms part of a series of new practice notes stemming from the Planning Act (Northern Ireland) 2011 [the 2011 Act] and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.

Where appropriate this practice note will therefore highlight:

- Relevant legislation;
- Procedural guidance;
- Definitions;
- Best practice examples / relevant case law

This practice note is not intended to replace the need for judgement by planning officers and those making planning applications. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note and legislation the provisions of the legislation will prevail.
1.0 Introduction

1.1 Schemes of Delegation are where decision-making for local applications are delegated to an appointed officer rather than the council, thereby enabling speedier decisions and improved efficiency.

2.0 Legislative Requirement

2.1 Section 31 (1) of the Planning Act (Northern Ireland) 2011 (the 2011 Act) requires a council to produce a Scheme of Delegation for operation within its area. This must be undertaken as soon as practicable after the 2011 Act comes into operation. Section 31 (1) (a) of the 2011 Act gives the Department the power to require the council to draft a new scheme at any time it deems appropriate or at such intervals as it may set out in regulations. Regulation 11 of the Planning (Development Management) Regulations (Northern Ireland) (2015) (the Development Management Regulations) states, ‘the Council must prepare a scheme of delegation at intervals of no greater than three years’.

3.0 Applications likely to be affected

3.1 Section 31(1)(a) of the 2011 Act denotes that it only applies to applications within the category of local development or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a local development. Local development is defined under Regulation 2 of the Development Management Regulations as all development other than major development. A scheme of delegation cannot include major, regionally significant development or an application which has council involvement.

3.2 The provisions of Section 31 do not include delegation of enforcement or other types of planning consent. However councils can make their
own provisions for delegating these matters and may choose to denote how those areas are dealt with in the same document. Paragraph 11.0 provides further advice on this.

4.0 Contents of Scheme

4.1 Regulation 8 of the Development Management Regulations identifies the contents to be included within a scheme of delegation. A scheme must describe the classes of local development to which the scheme applies and for every class denote which of the applications can be determined by an appointed officer. Where an application may only be determined by an appointed officer the particular circumstances should be specified. Councils can tailor their scheme to suit local circumstances and administrative procedures. This may include specifying in the scheme where delegation is restricted because of levels of public representation, objections from statutory consultees, where elected member(s) advise such an application should be dealt with at committee rather than by the appointed officer, or any other circumstances the authority wish to prescribe. The Scheme of Delegation should identify who the appointed officer is. This can vary from scheme to scheme, however it is advised that the Head of Planning within a council should be given this status and also those nominated by this officer.

4.2 Regulation 8 (3) and (4) of the Development Management Regulations prohibits applications, made by the council or an elected member of the council and applications where the council has an estate in the lands, being determined under the terms of a scheme of delegation. The scheme will require provision to be made for the processing of such applications by the council rather than delegated to the appointed officer. Apart from this restriction it will be up to an individual council to decide if it wishes to attach any further limitations to the scheme of delegation.
5.0 Benefits of Delegation

5.1 Schemes of delegation will allow a Planning Committee to devote its finite time to determining applications that present issues that the Committee are best served to determine. The scheme should be proportional to the issues raised and it is advisable that a council does not restrict the terms of delegation to the extent that it limits the number of applications to an extremely small proportion.

5.2 Delegation of planning applications to officers is seen as a critical factor affecting the overall performance of the development management process as it helps to ensure that decisions are taken at the most appropriate level, procedures are clear and transparent, costs are minimised and members have more time to concentrate on the more complex cases. It is recommended that, over time, councils should aim to have 90 – 95% of applications dealt with under a scheme of delegation. A council could find that, by not having a substantive number of applications delegated, the planning committee members could become overwhelmed. Full planning reports will have to be provided to members for each application which they must consider in order to demonstrate that they have taken into account all the relevant issues pertinent to the application. These lengthy reports will require a significant amount of time being spent on them by members before they attend the Planning Committee meeting.

6.0 Adoption of a Scheme of Delegation

6.1 A council must not adopt a scheme of delegation until it has been approved by the Department. Regulation 9 of the Development Management Regulations requires that a copy be sent to the Department for approval. The Department will not approve a scheme subject to conditions, consequently any revisions must be submitted to the Department for consideration and approval.
6.2 The Department will write to the relevant council indicating its approval of the scheme or to request amendments to the scheme. On receipt of approval of their scheme, the council, under Regulation 10 of the Development Management Regulations, must make a copy of the scheme of delegation available for inspection at its council office and publish it on its website. Councils are free to take additional steps to publicise their scheme should they consider it appropriate.

7.0 Process

7.1 Case officers should process a local development application in the normal manner, issuing consultations and undertaking the established publicity obligations. Where an application has been delegated, a case officer should consider the proposal and present a report to the officer appointed under the Scheme of Delegation to determine the application. The professional planning report should record that the application was either determined through the scheme of delegation or if it was to be presented to the council planning committee/full council meeting, whichever is deemed necessary.

7.2 It is crucial in the determination of any application that representations on applications are fully considered before determination of the application. In processing an application under a scheme of delegation, a council must ensure that planning officers receive objections in a timely manner. Depending on the scheme of delegation undertaken, the number of objections received may trigger a requirement to present the application to the committee and therefore comply with the processing arrangements made by the council. One of the objectives of an effective scheme of delegation would be to process local development applications in a prompt manner. It is imperative therefore that representations are brought to the attention of the relevant officer as soon as possible to ensure they are given due consideration before a decision is made.
7.3 If an application is determined under the terms of a scheme of delegation then officers should proceed to issue a determination in the normal manner.

8.0 Notification to Planning Committee

8.1 **Section 31(5) of the 2011 Act** allows a council to determine an application which otherwise would have fallen to the planning officer empowered to do so under a scheme of delegation. This may occur if an elected member or objector raise issues that it is felt should be discussed by the planning committee.

8.2 The planning committee can utilise significant discretion in the volume of local applications it chooses to be notified on and have brought before it. A broad approach can be adopted with delegated applications where a list of such applications is provided and circulated to elected members for information. This could be undertaken on a weekly basis. However councillors may not have the time to examine an extensive list as they will be receiving substantive planning reports with recommendations to consider before each of their Planning Committee meetings. The planning committee will also have other development management and development plan responsibilities so councillors may only have limited time to spend on determining applications. A council may choose therefore to reduce what is brought to member’s attention by only seeking notification of an application that falls within the terms of the scheme of delegation when, for example:

- The application has attracted more than XX written objections.
- A member of the planning committee requests the application be brought before the committee.
- The application is subject to an extant objection from a statutory consultee.
- Any application that an officer is minded to approve but which constitutes a significant departure from the development plan.
- The application seeks to vary a planning permission originally granted by the planning committee.
- The application can only be approved subject to the requirement of a legal planning agreement.

8.3 A case officer could notify the respective ward councillor and planning committee clerk of the application and the reason that they are highlighting it to them. The opportunity is there for the elected member to respond with their opinion and to provide a planning consideration as to why the application should proceed to committee or not. This should be recorded on the file.

8.4 In cases where an application complies with the scheme and no elected member has indicated otherwise, the appointed officer will then be free to determine the application as an approval or refusal as appropriate.

8.5 Should a councillor request an application be brought to committee, the elected member should inform the council planning officers at the earliest opportunity, so as to minimise disruption to the processing of the application. It is advised that this should be undertaken in writing within one month of the date of validation of the application. Members’ requests must state a planning reason for referral to the committee. An automatic referral without reference to at least one material planning considerations is not considered an appropriate or efficient manner in which to determine applications and could have cost implications.

8.6 Third parties may also raise significant issues and an appointed officer may, after consideration of the case officer’s report, conclude that there are issues that warrant the attention of the elected members. This may
be done in consultation with the planning committee clerk or the clerk of the council. Figure 1 sets out a possible process route of a local development application.

8.7 In circumstances where an application that falls under the terms of the scheme is referred to committee, Section 31(6) of the 2011 Act requires the council to include a statement of the reasons why it was referred and a copy of any such decision is to be served on the applicant. This must be done before the determination of the application. In practise this will allow an applicant to attend any council meeting held to discuss the application.

9.0 Referral to Planning Committee

9.1 Any request for consideration by a Planning Committee must include reasons why the request has been made. To work efficiently and expeditiously, referrals to the planning committee should occur only when matters related to planning are raised. Referrals should not be used by councillors or applicants for lobbying purposes and requests unsupported by sound reasons should not be referred to Planning Committee. Clear planning issues that could warrant referral are those related to, for example:

- Relevant national and local planning policy,
- Appearance and character of the development, layout and density,
- Traffic generation, highway safety, parking and servicing,
- Overshadowing, overlooking, noise and disturbance, odours or other loss of amenity.

9.2 The following are examples of matters not considered to be appropriate to take into account in the determination of planning applications:
- Boundary disputes, covenants and other property rights,
- Personal remarks (eg: applicants motives or actions to date),
- Rights to views or devaluation of property.

9.3 In the interests of reaching a timely decision items placed before the Planning Committee should be scheduled for the first available meeting. Items should not be referred to a later monthly meeting because a member (generally those making the request) cannot attend.

10.0 Appealing a referral to a planning committee

10.1 There is no statutory right of appeal against a decision to refer an application to council rather than be dealt with under a scheme of delegation. It is open to an individual to apply for judicial review in the Courts if they do not agree with the decision. This, as with most judicial reviews, is limited to legal or procedural aspects of the decision only.

10.2 The Department does not have a role in determining these applications. The final decision of the council or delegated officer can be appealed in the normal manner under the provisions set out in Sections 58 and 60 of the 2011 Act.

11.0 Decisions and determinations on other matters

11.1 Planning legislation requirements for a scheme of delegation does not include other decisions and determinations that the councils will be required to administer including enforcement duties. For these consents and actions that are outside the requirements of Section 31 of the 2011 Act councils will need to consider how they delegate such related decisions and determinations. The Local Government Act (Northern Ireland) 2014 Part 4 Section 7 enables a council to make
administrative arrangements for the discharge of its functions. Section 7(4)(b) allows a council committee\(^1\) to put in place its own administrative arrangements and these could be utilised, by the planning committee to delegate responsibility for other functions such as Listed Building Consent, Conservation Area Consent, Hazardous Substance Consent, Tree Preservation Orders and planning enforcement. A planning committee will seek to have an oversight role in these matters. However the Department would encourage councils to delegate these matters to allow for efficient working. Whilst they cannot form part of a scheme of delegation in terms of the 2011 Act they can be highlighted in the scheme as a separate administrative function related to a function of the council and the work of the planning committee. These matters can be included in a scheme of delegation as an annex and adopted by the council committee. This is illustrated in the example put forward in the next section.

11.2 The planning committee will on occasion wish to see details of decisions on other determinations. This should be a request and considered on a case by case basis, particularly if related to enforcement matters, which may be subject to legal proceedings.

12.0 Example Scheme of Delegation

12.1 Annex A contains an example scheme of delegation and is considered to be a best practise scenario. Part A sets out the exceptions when an application should be brought before the planning committee and Part B examines those applications that should be determined by an appointed officer of the council. Part C explains how the council intends the scheme to work, setting out how a councillor may request an application to be brought to the committee and how planning officials should notify members of an application being dealt with under the

\(^1\) Local Government Act (NI) 2014 Part 4 Section 7 (1) (b) allows a council to delegate to discharge functions to a committee of the council or to an officer of the council. This part of the legislation could be used if the scheme is approved by the full council.
scheme. Part D contains the publicity arrangements that a council must have followed in the adoption of its scheme.

12.2 Annex 1 of the model example scheme contains the possible arrangements for dealing with the other enforcement and planning consents matters that are part of development management functions for the council, but delegated to officers under Part 4 Section 7 (4) (b) of the Local Government (NI) Act 2014. This involves the committee devolving these functions to appointed officers, but with exceptions when the committee would wish to be involved. The appointed officers will largely be the same as those as undertaking delegation under the terms of the 2011 Act.
Scheme of Delegation – Applications will need to be considered against the councils approved scheme as per Section 31 of the Act 2011.

Application for Local Development

Processed by planning officer, including consultations and drafting of report.

Consideration by Appointed officer

DECISION NOTICE

Application for Major Development - Application for major development cannot be determined through a scheme of delegation as provided for in 2011 Act

Processed by planning officer, drafting of report and recommendation made to the council

Council Planning Committee/ Full Council Consideration

DECISION NOTICE
Annex A - Scheme of Delegation Example.

Scheme of Delegation: Delegation of Planning Applications and Enforcement

The scheme of delegation for the determination of planning applications was agreed by the Council at its meeting of .......following approval by the Department of Environment for Northern Ireland on......... The approval is in accordance with Section 31 of the Planning Act (Northern Ireland) 2011. The scheme of delegation takes effect from.....

The scheme of delegation covers all classes of local development, denoted enforcement activities and determinations on other planning matters.

Part A – Applications to be determined by the Planning Committee of the Council.

The following applications for planning permission shall be determined by the Planning Committee of the Council

- Any application made by the Council or an elected member of the council and applications where the council has an estate in the lands.
- Any application that the appointed officer is minded to approve under terms of this scheme of delegation, but which is the subject of an extant objection from a statutory consultee.
- Any application that the appointed officer is minded to approve under the terms of this scheme of delegation, but which would constitute a significant departure from the provisions of the Council's Local Development Plan.
- Any application which would normally be determined by the appointed officer under the terms of this scheme of delegation, but which has been the subject of notification that it is to be determined by the Planning Committee of the council
- A legal agreement is required.

Part B – Delegated Applications

The following applications shall be delegated for determination by the appointed officer of the council. The appointed officer of the council is the officer appointed in terms of Section 31 of the Planning Act (Northern Ireland) 2011 as a person holding the position of Head of Planning and Development Management Principal.
- Any application which does not fall within any of the categories comprising Part A of this scheme of delegation.
- Any application for development defined as ‘Local Development’ in The Planning (Development Management) Regulations (Northern Ireland) 2015.
- Any application to vary or amend a condition on an extant planning permission.
- Any application to vary an extant planning permission.

Part C – Referrals to Committee

An appointed officer is prohibited from determining an application for planning permission and should refer to the committee where councillors have requested this be done.

_Councillors should be encouraged to give sound planning reasons as to why referral to the committee is necessary and be reminded of the importance of an efficient decision making process._

This note advises how and when to notify members of the planning committee when an application is being dealt with under this scheme.

When to notify members

Councils are free to proscribe their own method of doing this. Below is a suggestion:

A weekly list of delegated applications shall be circulated amongst members. Applications that fall for consideration of Part A of the scheme of delegation will be drawn to the attention of Members. Alternatively members could be notified only under the following circumstances:

- The application has attracted more than 10 written objections.
- The application seeks to vary a planning permission originally granted by the planning committee.
- The application can only be approved subject to the requirement for a legal planning agreement.

Information should be circulated no later than five working days prior to the date of determination. Information should be circulated during normal working hours (Mon – Fri before 5.00 pm). E-mails circulated before 5.00pm on a Monday, means a decision can be
issued on the Tuesday of the following week (this is based on a week with no bank holidays).

**How to notify members**

Councils are free to proscribe their own method of undertaking this. Below is a suggestion:

All councillors should be notified via e-mail.

The email should be sent by the case officer or council officer to all Councillors and copied to the Members Secretariat, Head of Planning and other council officers as deemed necessary.

**Members request referral**

The request from a member should be recorded. The member must give planning reasons for the request. On acceptance of the members request the case officer/council official must write to the applicant and interested parties to inform them that the application is no longer being determined through the Scheme of Delegation, but is to be heard by the planning committee.

In practise informing the applicant and other parties that an application is to be referred to committee can be undertaken at the same time as arrangements are made to allow relevant parties to be heard by the committee.

**Part D – Publicity**

On adoption of this scheme of delegation the council made a copy available on the councils website at.................

Available at (address of appropriate council office)

An advert was placed in the local press *(This is optional)*

*Regulation 10 requires, on adoption, councils to publish on their website and on a hard copy in a council office. This is a minimum requirement and it does not prohibit further publicity being undertaken by the council such as placing adverts/notices in the local press).*
Annex 1 – Enforcement and Determinations on Other Matters

This section deals with other planning decisions and determinations that a council will have to make. It is recommended that these be delegated in the most part to council officials.

As well as the planning functions covered by Section 31 of the 2011 Act, the Council will also have to administer the enforcement of planning and the processing of other planning consents. Part 4 Section 7 (4) (b) Local Government Act (Northern Ireland) 2014 allows a council committee to delegate to an officer of the council. The committee has endorsed this approach on..........

The Planning Committee shall be required to consider and determine: -

- the making of a Tree Preservation Order
- confirmation of a Provisional Tree Preservation Order
- the formal reporting of planning enforcement matters to the Public Prosecution Service/ Commencement of proceedings in a magistrates court.

Councils may wish to consider the delegation of all planning enforcement matters to council officers.

The following matters are delegated to the appointed officer:

- the serving of a provisional Tree Preservation Order
- the investigation of formal planning enforcement proceedings through the issuing of enforcement notices, stop notices, temporary stop notices, fixed penalty notices, and planning contravention notices.,
- determination of any application for a certificate of lawful development
- determination of any application for listed building consent
- determination of any application for conservation area consent
- determination of any application for advertisement consent
- determination of any application for carry out works to trees
- determination of any hazardous substance consent
- applications for Non Material Changes

The appointed officers are as follows:.................................................................
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