

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Council

**DATE:** 24<sup>th</sup> November 2009

**CONTACT OFFICER:** Teresa Clark, Democratic Services Officer  
**(For all Enquiries)** (01753) 875014

**WARD(S):** All

### **PART I** **FOR DECISION**

#### **RECOMMENDATIONS OF THE PLANNING COMMITTEE OF 17<sup>th</sup> NOVEMBER 2009- NEW PLANNING LEGISLATION: PROPOSAL TO AMEND DELEGATION OF FUNCTIONS TO OFFICERS**

#### 1. **Purpose of Report**

- 1.1 To advise the Council of the recommendations of the Planning Committee on proposed amendments to the Scheme of Delegation to Officers within the Constitution.

#### 2. **Recommendations**

- 2.1 The Council is requested to resolve:-

- (a) That the proposed amendments to the Scheme of Delegation to Officers as set out in this report be approved with immediate effect, subject to any amendments agreed by the Planning Committee on 17<sup>th</sup> November, 2009.
- (b) That the Constitution be amended accordingly.

#### 3. **Community Strategy Priorities**

- **Celebrating Diversity, Enabling inclusion**
- **Adding years to Life and Life to years**
- **Being Safe, Feeling Safe**
- **A Cleaner, Greener place to live, Work and Play**
- **Prosperity for All**

This report is administrative in nature and it does not directly contribute to the community strategic priorities.

#### 4. **Other Implications**

- (a) **Financial**

The proposal to delegate these functions to Officers as set out in the report, assists in the effective delivery of the service at minimum cost and will help maintain planning performance which is linked to Housing and Planning Development Grant.

(b) Human Rights Act and Other Legal Implications

There are no specific issues arising as a result of this legislation and the proposed delegation.

(c) Workforce

No specific workforce issues.

5. **Supporting Information**

5.1 The Government has introduced amendments to planning legislation which came into force on 1<sup>st</sup> October 2009 to provide Local Planning Authorities with the power to consider:

(a) The extension of time limits on the validity of unimplemented planning permissions granted on or before 1<sup>st</sup> October 2009.

(b) Minor small scale changes to planning permissions. These are described as non material changes and a decision must be made within 28 days.

Extension of time limits

5.2 These powers have been introduced to allow a simplified procedure when the only issue is the extension of time on an unimplemented planning permission. The standard time limit on planning permissions is 3 years, dating from the Planning and Compulsory Purchase Act 2004. Before the alteration brought in by the 2004 Act the standard timescale was 5 years.

5.3 The simplified procedure removes the need for a fresh application but the details of the application, such as the plans, must remain the same.

5.4 The Council is not precluded from refusing a planning application to extend time limits but there must be some material change in planning policy or guidance. In many cases circumstances will not have changed to a sufficient degree to warrant a different decision and an extension of time would be justified. It is not considered that the existing Scheme of Delegation to Officers covers a decision to extend time limits on applications made for this purpose.

5.5 It is proposed that decisions on the extension of time limits be delegated to officers and the Scheme of Delegation be amended accordingly. It is considered that this can apply to all applications including ones previously considered by the Planning Committee. If the Scheme is altered in this way arrangements for Members call in to the Planning Committee and for officer's to refer any application to Planning Committee remain unaffected and provide safeguards for applications to be brought to Committee for decision if there are material changes in circumstances since the original decision.

5.6 Accordingly the Scheme of Delegation, Development Control Functions, Appendix 2, should be amended to include:

***'Applications to extend the time limits on planning permissions made in accordance with the Town and Country Planning (General Development Procedure (Amendment No 3) (England) Order 2009'.***

Minor small changes

5.7 The Council, in common with many other Councils, have dealt with minor amendments following the grant of planning permission in an informal manner. The lack of a formal procedure has been an omission in the legislation which the government has decided to address. The new procedure will enable the Council to charge fees, which will be prescribed by government, for such minor changes. The informal practice does not allow the Council to impose fees for this service. These new powers are considered to fall within the scope of Sec 101 of the Local Government Act 1972 relating to the discharge of any of the functions of a local authority including references to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of those functions. This power can be construed as enabling all subsequent non material changes to be made after planning permission is granted. Although this is a valid procedure it would be prudent to simplify arrangements to make a specific amendment to the Scheme of Delegation to delegate to officers all decisions under the new Section 96A of the Town and Country Planning Act 1990 and any regulations relating to the implementation of this section. Decisions under this power must be made within 28 days. The government has indicated that further guidance will be issued.

5.8 Accordingly the Scheme of Delegation, Development Control Functions, Appendix 2, should be amended to include:

***'Applications made pursuant to Section 96A of the Town and Country Planning Act for non material changes to planning permission in accordance with the Town and Country Planning (General Development Procedure (Amendment No 3) (England) Order 2009 and any other regulations and guidance relating to this provision'.***

Other matters

5.9 The examination of the existing Scheme of Delegation as a result of the introduction of this legislation has revealed that it would be prudent to make some other changes to it in the interests of clarification. The existing scheme, attached as **Appendix A** of the report, is a mixture of broad powers of delegation such as item 1 giving delegated powers to determine applications for planning permissions and other more precisely defined items e.g. items 3 relating to trees and 8 relating to Certificates of Lawful Use. These can be construed as being a type of planning application.

5.10 It is suggested that the following amendments and additions be made to the Scheme of Delegation for the purposes of updating or clarification.

#### Directions for further information

- 5.11 **Item 5, Development Control Functions, Appendix 2 should be updated to refer to Article 3(2) of the Town and Country Planning General Development Procedure Order 1995.**

#### Applications to notify the Council about the demolition of dwellings

- 5.12 This applies to the proposed demolition of dwellings which do not benefit from a planning permission which includes their demolition. The planning controls do not prevent demolition but enable the Council to control the method of demolition and site restoration. A decision must be made within 28 days.
- 5.13 Include in Development Control Functions, Scheme of Delegation, Appendix 2:

***'Applications for the prior notification of the demolition of buildings pursuant to Part 31 of Schedule 2 of the Town and Country Planning General Development Order 1995'.***

#### Advertisements

- 5.14 Item 42 – Advertising Boards (Scheme of Delegation to Officers, Green and Built Environment-page 90 of Constitution). The wording is poor and does not explicitly cover all the types of advertisements that are within planning control nor the enforcement powers available under the Advertisement Regulations.
- 5.15 Replace item 42 in the Scheme of Delegation with:

***'Determination of applications for advertisement consent made in accordance with the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and in consultation with the Borough Secretary and Solicitor the powers in these regulations relating to the discontinuance of deemed consent'.***

- 5.16 The Planning Committee has the power to delegate to officers matters which fall within Parts III, IV and V of the Town and Country Planning Act 1990. This means that the changes to the delegation on Advertisements must be referred to the Council as these provisions stem from Part VIII of the Act.

#### 6. **Comments of Other Committees**

This report was considered by the Member Panel on the Constitution on 12<sup>th</sup> November 2009. The Panel made a number of comments on the proposal with regard to extension of time limits for consideration by the Planning Committee.

#### 7. **Recommendations of the Planning Committee**

The Planning Committee will be considering this report at its meeting on 17<sup>th</sup> November and its recommendations will be circulated to the Council.

8. **Appendices Attached**

Appendix A - Extract from the Constitution.

9. **Background Papers**

Town and Country Planning (General Development Procedure)(Amendment No 3) (England) Order 2009.

Town and Country Planning General Development Order 1995.

Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

Agenda of the Planning Committee of 17<sup>th</sup> November, 2009.

**APPENDIX A**

	<b>FUNCTION</b>	<b>AUTHORISED OFFICER</b>
39.	<b><u>Development Control Functions</u></b> The Development Control Functions set out in the Appendix 2 hereto.	Head of Planning & Strategic Policy
40.	<b><u>Emergency Tree Works</u></b> The making and confirmation of orders under Sections 198 and 201 of the Town & Country Planning Act 1990 for the preservation of trees in the Borough (where no objections have been received) and issue of consents to the felling, topping, lopping, etc. of individual trees.	Borough Secretary and Solicitor in consultation with Head of Planning & Strategic Policy
41.	<b><u>Cable Television</u></b> Response to consultations between The Cable Corporation and the Local Planning Authority regarding the proposed installation of cable television apparatus except for proposals relating to installations within conservation areas or affecting listed buildings or where it is considered an objection should be raised.	Head of Planning & Strategic Policy
42.	<b><u>Advertising Boards</u></b> Determination of applications for display of "For Sale/To Let" boards requiring the consent of the Council.	Head of Planning & Strategic Policy
43.	<b><u>Demolition</u></b> To determine whether the approval of the Council will be required to the method of the proposed demolition and any proposed restoration of the site.	Head of Planning & Strategic Policy
44.	To determine whether to approve the submission of subsequent details of demolition/restoration.	Head of Planning & Strategic Policy

	<b>FUNCTION</b>	<b>AUTHORISED OFFICER</b>
45.	<p><b><u>Town &amp; Country Planning Act 1990 (as amended)</u></b></p> <p>(a) To issue &amp; serve planning contravention notices under Section 171C of the Act and to consider any representations subsequently received.</p> <p>(b) To authorise the issue and service of an Enforcement Notice, Stop Notice and Temporary Stop Notice under the Town &amp; Country Planning Act 1990 where urgent action is required to protect the amenities of local residents and the surrounding area.</p> <p>To authorise the issue and service of an enforcement notice where operational development (i.e. building, engineering, mining or other operations) or an unauthorised change of use has occurred.</p> <p>To authorise the issue and service of a notice requiring the proper maintenance of land under Section 215 of the Town and Country Planning Act 1990.</p> <p>To authorise the raising and issuing of notices under the provisions of S.330 and S. 172 of the Town and Country Planning Act 1990 and/or S.16 of the Local Government (Miscellaneous) (Provisions) Act 1976 and the Local Government and Planning (Amendment) Act 1981 and Planning Contravention Notices under S.171c and 171d of the Town &amp; Country Planning Act 1990.</p> <p>(f) Not to take enforcement action in those cases where it would be in expedient.</p>	<p>Head of Planning &amp; Strategic Policy in consultation with Deputy Borough Solicitor</p> <p>Borough Secretary and Solicitor in consultation with the Head of Planning &amp; Strategic Policy</p> <p>Borough Secretary and Solicitor in consultation with the Head of Planning &amp; Strategic Policy</p> <p>Borough Secretary and Solicitor in consultation with the Head of Planning &amp; Strategic Policy and Head of Public Protection</p> <p>Borough Secretary and Solicitor in consultation with the Head of Planning &amp; Strategic Policy</p> <p>Head of Planning &amp; Strategic Policy</p>
46.	<p><b><u>Planning &amp; Compensation Act 1991</u></b></p> <p>To decide to decline to determine applications if he/she is satisfied that they fall within all provisions of Section 17 of the Act.</p>	<p>Head of Planning &amp; Strategic Policy</p>

**DEVELOPMENT CONTROL FUNCTIONS**

37. The following functions are delegated to the Head of Planning & Strategic Policy subject to any conditions set out below:-
1. Determination of all applications for planning permission (except for major developments ++) within the constraints set out below:-
    - (a) Approval of applications which comply with existing approved statutory statements of policy and substantially comply with non-statutory policy guidelines.
    - (b) Refusal of applications which do not comply with existing approved statutory and non-statutory statements of policy.
- [++ defined as
- 1 Development of 10 or more dwellings (0.5 hectare where no numbers are given)
  - 2 Development of buildings of 1,000 square metres floorspace or development on sites of 1 hectare or more
  - 3 Working of minerals and waste development (excluding minor ancillary development to an existing use, details pursuant to a permission or variation or deletion of conditions previously imposed.)
2. Matters of mutual interest referred to the Council by adjoining authorities when the proposed development has no adverse affect on the planning policies operating within the Borough.
  3. Authorising the felling, lopping or other works to trees within a Conservation Area or any trees which are subject to a Tree Preservation Order.
  4. The withdrawal or amendment of an Enforcement Notice when there has been a change in circumstances.
  5. Directions requiring further details, information, evidence or particulars in respect of an application for planning permission pursuant to Article 10(4) of the Town & Country Planning General Development Order 1988.
  6. Preparation and signature of decision notices in respect of planning applications after consultation with the Borough Secretary and Solicitor in appropriate cases. (Such decision notices shall be dated with the date upon which the decision was taken).
  7. The power to issue a Breach of Condition Notice under Section 187A of the Town and Country Planning Act 1990 is delegated to the Head of Planning and Strategic Policy in consultation with the Borough Secretary and Solicitor.



8. In consultation with the Borough Secretary and Solicitor to determine applications for Certificates of Lawful Use or Development.
9. In consultation with the Borough Secretary and Solicitor, authority to enter into planning agreements in cases where in all other respects the application falls within this Scheme of Delegation.
10. Determination of applications deferred by the Planning Committee which are subsequently amended such that they comply with the provisions of 1(a) above, unless the Committee specifically reserves the determination to itself.
11. Decisions under the Town & Country Planning (Environmental Impact Assessment) (England & Wales) Regulations 1999 as to:-
  - (a) whether or not an environmental impact assessment is needed; and
  - (b) the main effects of a development which an Environmental Statement should cover.
12. Preparation and approval of conservation area character assessments.
13. In consultation with the Borough Secretary and Solicitor to issue and serve a high hedge Remedial Notice under the Anti Social Behaviour Act 2003.

### **Conditions**

#### **Ward Members**

The Head of Planning and Strategic Policy shall refer applications under Paragraph 1(a) and 1(b) above to the Planning Committee for determination provided any Ward Member in which the Application Site is situated has:-

- (i) set out in writing to the Planning Case Officer the detailed planning issues/concerns which s/he has in respect of the Application and
- (ii) s/he has had an official and formal discussion on such planning issues/concerns with the Planning Case Officer or the Head of Development Control or the Head of Planning and Strategic Policy and the issues/concerns remain unresolved. The Ward Member will be informed of the date of the meeting so that s/he can attend and speak in support of the referral.

### **Council Applications**

In the case of Applications made by the Council paragraph 1(a) shall apply unless an objection has been received against the proposal and if so the Application shall be referred to the Planning Committee for determination

#### **Petitions**

Petitions submitted in respect of Planning Applications shall be copied to the relevant Ward Members and normally dealt with by the Head of Planning and Strategic Policy/Deputy Borough Secretary in accordance with the Public Participation Scheme.