

Planning Committee

2.00pm, Wednesday, 12 December 2018

Planning Schemes of Delegation

Item number	8.2
Report number	
Executive/routine	
Wards	All
Council Commitments	

Executive Summary

The schemes of delegation on planning applications allow officers to make decisions in the interests of an effective and efficient service. However, safeguards are required to ensure that there is an appropriate level of scrutiny by the Development Management Sub-committee of applications which raise issues of significant public interest. Following an investigation of circumstances leading to a delegated decision to approve a planning application at a major sporting venue, procedures are being tightened to reduce risk and deliver quality assurance.

While the planning decision in this case remains as granted, it is recognised that a process was not in place which would have escalated the application to more senior Planning Officers for a second opinion.

Planning Schemes of Delegation

1. Recommendations

- 1.1 That the Committee agrees to the proposed changes to procedures specified in paragraphs 3.24 – 3.28 to reduce risk and deliver quality assurance.
- 1.2 In relation to the planning application for an additional rugby stadium at Murrayfield, that the Committee notes the apology to interested parties from the Executive Director of Place in relation to the lack of a process which would have escalated the application to more senior Planning Officers for a second opinion on whether to refer the application to the Development Management Sub-committee for determination.

2. Background

- 2.1 In the main, delegated powers in respect of planning fall within the Council's overall scheme of delegation to officers set out in terms of the Local Government (Scotland) Act 1973. However, section 43A of the Town and Country Planning (Scotland) Act 1997 requires planning authorities to draw up a statutory scheme of delegation in respect of local developments.
- 2.2 The statutory scheme requires planning authorities to delegate to an appointed officer (in this Council, the Chief Planning Officer) the determination of applications for planning permission for local developments or any application for consent, agreement or approval required by a condition on a grant of planning permission for a local development. The "appeal" of such a decision by an applicant is by way of a review by the local review body rather than an appeal to Scottish Ministers. This balances the role of local elected members in the planning process with efficient decision making processes. The statutory scheme in its current form has been operating since August 2013.
- 2.3 Amendments to the Chief Planning Officer's delegated functions in respect of the Local Government (Scotland) Act 1973 were approved by full Council on 27 June 2018.
- 2.4 At its meeting on 23 August 2018, the Council agreed to changes to the statutory scheme. The agreed changes included:
 - 2.4.1 allowing officers to determine applications for approval with up to 20 objections on householder development;

- 2.4.2 allowing officers to determine applications for refusal with up to 20 support comments on local development; and
 - 2.4.3 ensuring applications are determined by the Development Management Sub-committee where there are unresolved objections from statutory consultees.
- 2.5 The planning legislation requires a planning authority to seek approval from Scottish Ministers before adopting a statutory scheme. Approval was given by Scottish Ministers on 4 October 2018 for the Council to proceed to adopt the revised scheme. Council has not yet adopted the changes to the statutory scheme. Accordingly, the proposed changes to the schemes of delegation with respect to planning applications have not yet been implemented.
- 2.6 Currently around 95% of planning applications are determined by officers, meaning that the Development Management Sub-committee can concentrate on the more complex and/or contentious cases. The annual case load is approximately 4000 applications, of which around 200 applications are referred to the Development Management Sub-committee for a decision. Increased delegation is one way of improving efficiency and performance and so improving customer satisfaction.
- 2.7 The criteria against which a decision is made to determine a planning application under delegated authority are either:
- 2.7.1 mandatory (such as the number of material objections); or
 - 2.7.2 discretionary, allowing for an element of planning judgment (such as the materiality of objections received and the likelihood of significant public interest);
- 2.8 In terms of the latter, Planning officers and managers build up a working knowledge of Development Management Sub-committee members' expectations of the exercise of that judgement based on experience of handling development proposals. This working knowledge is further enhanced via the use of workshops with elected members to explore ways of working. Over the term of previous administrations, each Planning Committee has periodically reviewed the interpretation by officers of the delegation criteria to assist in achieving consistency and managing expectations.
- 2.9 The delegation criteria was most recently reviewed early in 2018 by the current Planning Committee members in a workshop with Planning managers to discuss service performance and improvements. It led to the proposed revisions to the Planning schemes of delegation.

3. Main report

- 3.1 The circumstances leading to a delegated decision to approve a planning application at Murrayfield Stadium have been questioned by some elected members. The Chief Planning Officer was asked to investigate the matter and report to Planning Committee. This report highlights the findings and recommends

a tightening of procedures within the Planning service to ensure greater scrutiny in relation to the use of delegated powers.

Planning application 18/023489/FUL at Murrayfield Stadium

- 3.2 The application for the erection of four spectator stands, a replacement 3G sports pitch and associated infrastructure and facilities on the “back pitches” at the stadium was received on 31 May 2018. It was defined as a local development application and available to be determined under delegated authority. This means that unless issues arose during the assessment of the proposals which would trigger referral to the Development Management Sub-committee, the application could be determined by appointed officers. Planning permission was granted under delegated authority on 21 September 2018.
- 3.3 The investigation has not revisited the assessment of the proposals but only those aspects of the assessment of planning issues which were relevant to the method of decision making. In terms of the Scheme of Delegation, there were four factors identified as explicitly applying in this instance when considering whether a report to the Development Management Sub-committee would have been required:
- 3.3.1 an elected member request;
 - 3.3.2 an outstanding unresolved objection from a statutory consultee;
 - 3.3.3 if more than six material objections had been received; and
 - 3.3.4 if the Chief Planning Officer considered the proposals to be of significant public interest.
- 3.4 **Factor 1:** *an elected member has requested, within 21 days from the date of neighbour notification, the date of the advertisement or the validation date whichever is the later, be referred to the Development Management Sub-Committee for material planning reasons.*
- There is no record of such a request being made.
- 3.5 **Factor 2:** *outstanding unresolved objections from statutory consultees and the application is recommended for approval*
- There were no objections. The issue raised by SportScotland was addressed in a letter of undertaking by the applicant.
- 3.6 **Factor 3:** *if more than six material objections have been received from third parties*
- A total of 10 representations were received:
- 3.6.1 Seven were made online (6 objections and 1 support); and
 - 3.6.2 Three were made by email (in the final assessment, these were treated as comments and not objections).
- 3.7 The “Decision making process: Core Questions” checklist is used by the planning case officer to decide whether to present the report of handling for inclusion in an agenda for the Development Management Sub-committee or for decision under delegated authority. The case officer completed the checklist on 5 September identifying that there were more than six material objections. On this basis they

presented their draft report on 6 September for consideration by the editing team manager for inclusion in the Development Management Sub-committee agenda for 26 September meeting. The application record on the UNiform computer system showed seven objections, two representations (comments) and one support.

- 3.8 The calculation hinges on the interpretation of one representation (on behalf of Murrayfield Ice Rink) which refers to the proposals leading to an “intensification of use” of the site. Paragraph 3.13 below sets out the Planning Service’s common interpretation of “intensification of use”. The planning case officer and managers had assessed the proposals as operational development within the “planning unit” of Murrayfield Stadium and in that context the proposals did not amount to a material change of use. Therefore the planning case officer had summarised the representations in para 6.2 of the report as 6 objections, three general comments and one supporting letter. The representation was therefore treated as non-material and did not trigger referral to the Development Management Sub-committee for a decision.
- 3.9 For clarity, six of the other representations (five from local residents and one from the Water of Leith Conservation Trust) were correctly identified as material objections. One from a member of the public supported the proposals. One from the Edinburgh Access Panel (an advisory body) commented on the absence of information on the layout drawings. It was not an objection. The missing information was provided on revised plans submitted by the applicant and these are available on the Public Access module. A representation from Murrayfield Curling Ltd supported the proposals in general but raised concerns relating to the management of existing on-site car parking. It was not an objection. Parking was addressed in the transport considerations.
- 3.10 Following the decision to use delegated authority to approve the application (based on the number of objections stated in the report), the case officer rechecked the number and content of the representations and revisited the “Decision making process: Core Questions” checklist. They altered it to match the summary in the report of handling, accepting that the issues raised in the representation from Murrayfield Ice Rink should be interpreted as neutral due to the interpretation of the “intensification of use”.
- 3.11 **Factor 4:** *which the Chief Planning Officer considers to be controversial, or of significant public interest, or has a significant impact on the environment.*
- In assessing this factor, it is important to have regard to the information available to officers at the time of the decision to use delegated authority to determine the application.
- 3.12 No elected member had asked for the application to be referred to the committee, the volume of representations and issues raised in them did not indicate a significant body of concern in the local community and the proposal was viewed as operational development within the wider sports complex site. The latter meant that there would not be wider regulatory issues for Planning to interact with.

3.13 The interpretation of “intensification of use” is also an important factor. This was assessed in relation to previous experience where a common interpretation is taken to be:

The intensification of a use may constitute a material change of use, but only in circumstances where the intensification is so great as to affect the definable character of the land and of its use.

3.14 Given that the proposal has a spectator capacity of 7,900 in new stands, alongside the capacity of 67,000 in the main stadium, and that the user (Edinburgh Rugby) was already holding sports events on the site, the view was taken that the “intensification of use” was a non-material planning consideration. The case officer had described the proposals in part “b) Scale, Form, Design and Materials” of their report of handling as “modest in scale in comparison to the existing main stadium”.

3.15 **Conclusions:** there are two issues arising from the above findings;

3.15.1.1 The first relates to whether in terms of the 10 representations received there were more than 6 material objections and in particular the interpretation of issues raised in the representation on behalf of Murrayfield Ice Rink; and

3.15.1.2 The second issue relates to the nature of the proposals and whether there could have been a different interpretation by officers of the public interest.

3.16 **Conclusion Issue 1:** six material objections were made via online representations. If the email representation by Murrayfield Ice Rink had been considered by officers to be a material objection then the application would have required to be referred to the Development Management Sub-committee for a decision, in terms of the scheme of delegation.

3.17 The representation on behalf of Murrayfield Ice Rink both supports the retention and growth of Edinburgh Rugby and raises an objection to the “intensification” of the use of the site unless specified clarifications and actions can be progressed. It should be noted that subsequent to the decision, the agent for Murrayfield Ice Rink has written (2 November 2018) expressing surprise that their representation (1 July 2018) was not interpreted as an objection and that they had received no communication as to why it was treated as a general comment.

3.18 Notwithstanding the Planning judgement exercised in determining the interpretation of “intensification of use” as not being a material consideration, there were a number of other issues raised in the representation, including road safety and open space which were addressed in the report of handling. On balance it would have been advisable that this representation was read as a whole and interpreted as an objection rather than a neutral comment unless a withdrawal of the representation had been agreed with the party on the justification that specified clarifications and actions had addressed the concerns.

- 3.19 However given the information before officers at the time it is considered that the approach they took did not amount to an unreasonable exercise of their Planning Judgment in determining whether this representation should be interpreted as a material objection.
- 3.20 **Conclusion Issue 2:** Given the prominence of the sporting venue and past history of planning decisions on such developments a judgement was required in terms of potentially significant public interest. In view of the wider interest in sporting venues and with the benefit of hindsight, it would have been advisable for the team manager to discuss the proposal to delegate the decision on such an application with a service manager.
- 3.21 However, given the information before officers at the time it is considered that the approach they took on this issue did not amount to an unreasonable exercise of their Planning Judgment.
- 3.22 **Overall Conclusions:** Therefore, while it is not considered that the officers acted unreasonably in exercising their planning judgment on these issues, based on the findings of the investigation, it would have been advisable that this application had been referred by them to the Development Management Sub-committee for a decision.
- 3.23 While the planning decision in this case remains as granted, it is recognised that a process was not in place which would have escalated the application to more senior Planning Officers for a second opinion.

Procedural improvements

- 3.24 There are a number of lessons to be learned from this case. Some of these have already been discussed with team managers and officers and changes have been implemented.
- 3.25 The submission of representations will continue to be strongly encouraged via the Planning Portal so that the person or organisation clearly identifies whether the comments are in support or are an objection.
- 3.26 Where a planning case officer considers that an objection is non-material in planning terms, all matters in that representation must be non-material before it can be discounted from the number of objections. Or a planning case officer must contact the representator to seek their agreement to the withdrawal of the objection, for example where other matters have been addressed by the applicant subsequent to the objection being made. If not, and the number of objections then exceeds the threshold in the Schemes of Delegation, the application must be determined by the Development Management Sub-committee.
- 3.27 In the interpretation of “significant public interest”, regard must be had to the role of a property in national, civic or community terms and therefore a wider interest than just the number of representations made on a specific application. The “Decision making process: Core Questions” checklist has been amended so that there is a

reminder to planning case officers to seek service manager assurance in such cases (see Appendix 1). Furthermore, if required to help make a judgement on interpretation of “significant public interest”, the service manager will seek the views of the Convener and Vice-Convener prior to making a decision. A training workshop on scheme of delegation procedures for planning officers has been held.

- 3.28 The Planning Service’s development management activities are accredited to Quality Assurance standard ISO 9001: 2015. This seeks to ensure that systems are in place and used consistently to manage risk and deliver a quality service. The standard involves the use of both internal audit and annual surveillance audit by an external independent auditor. The use of the schemes of delegation will be covered in an internal audit in Spring 2019 and in the next surveillance audit in September 2019. Where an auditor is not satisfied by the evidence of compliance, improvements are proposed and management actions must be reported back to the auditor. The Planning Service Improvement Plan, which is the subject of a separate report to this meeting of Planning Committee, has included the scheme of delegation as one of the processes to be prioritised in Year 1.

4. Measures of success

- 4.1 A Planning service which makes service improvements to allow best value to be realised and a more efficient planning system created.

5. Financial impact

- 5.1 There are no financial impacts arising from this report.

6. Risk, policy, compliance and governance impact

- 6.1 The procedural changes contained in this report seek to reduce risk and deliver quality assurance in the operation of the schemes of delegation for decision making on planning applications.

7. Equalities impact

- 7.1 The Equalities and Rights Impact Assessment indicates the following:
- 7.1.1 There are no infringements of Rights under these proposals;
 - 7.1.2 There are no identified positive or negative impacts on the duty to eliminate unlawful discrimination, harassment or victimisation;
 - 7.1.3 The proposals have been designed to ensure there is no impact on participation in public life; and

- 7.1.4 The proposals promote the duty to foster good relations as they make clear the service standards that can be expected and so promote understanding.

8. Sustainability impact

- 8.1 The impact of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties has been considered, and the outcome is summarised below:
- 8.1.1 The proposals in this report do not affect carbon emissions;
 - 8.1.2 The need to build resilience to climate change impacts is not relevant to the proposals in this report because it is concerned with procedural matters;
 - 8.1.3 The proposals in this report will help achieve a sustainable Edinburgh by improving the efficiency of council processes; and
 - 8.1.4 Environmental good stewardship is not considered to impact on the proposals in this report because there is no relevance to the use of natural resources.

9. Consultation and engagement

- 9.1 No consultation or engagement has taken place on the proposed changes.

10. Background reading/external references

- 10.1 Planning and Building Standards Service Improvements – report to Planning Committee 14 March 2018
- 10.2 Scheme of Delegation – report to full Council 27 June 2018.
- 10.3 Planning Statutory Scheme of Delegation – report to full Council 23 August 2018
- 10.4 The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013
- 10.5 Application 18/02489/FUL for planning permission at Murrayfield Stadium

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11. Appendices

1. Revised checklist for use by officers

CHECKLIST A

**CURRENT STATUTORY SCHEME OF DELEGATION -
AUGUST 2013**

Questions	YES	NO
Has the application been withdrawn or is permitted development, not development or permission not required?	Short report	Go to next question
Is the application for a non-material variation?	VARREP	Go to next question
Has the application been submitted by or on behalf of an elected member or by a partner/close friend/relative?	Refer to Committee	Go to next question
Has the application been submitted by or on behalf of an officer involved in the planning process or by a partner/close friend/relative?	Refer to Committee	Go to next question
Does the application involve the removal or amendment of conditions previously applied by the Committee?	Refer to Committee	Go to next question
Has the application been requested for referral to the Committee by an elected members within 21 days of the expiry date for comments and is the referral justified?	Refer to Committee	Go to next question
Has the application been identified for a Committee decision at validation stage?	Refer to Committee	Go to next question
Has the application been submitted by the Council for more than routine minor development?*	Refer to Committee	Go to next question
Is the application for Hazardous Substances consent?	Refer to Committee	Go to next question
Are there developer contributions with financial contributions over £250,000 or is the requirement for development contributions not being met?	Refer to Committee	Go to next question
Can the application be considered controversial or of significant public interest, or as having a significant impact on the environment? (Service Manager assurance should be sought where necessary. Service managers may consult with the Planning Convener and Vice-convener when making this decision)**	Refer to Committee	Go to next question
If the application is recommended for GRANT or APPROVAL:	YES	NO
Are there more than 6 material objection comments?***	Refer to Committee	Go to next question
Is it contrary to the Development Plan and more than a minor infringement?	Refer to Committee	Go to next question
Has the application between 1 and 6 objection comments and/or minor infringements of policy and a local development?	Local Delegated Decision	Go to next question
Has the application no objection comments, complies with policy and is a local development?	Local Fast Track Decision	Go to next question
Has the application between 1 and 6 objection comments and/or minor infringements of policy and is a non-local development?	Delegated Decision	Go to next question
Has the application no objection comments, complies with policy and is a non-local development?	Fast Track Decision	Go to next question

If the application is recommended for REFUSAL:	YES	NO
Are there more than 6 support comments?	Refer to Committee	Go to next question
Does the application have 6 or less support comments and is a local development?	Local Delegated Decision	Go to next question
Does the application have 6 or less support comments and is a non-local application?	Delegated decision	END

- * The case officer should agree with their line manager if the proposal is more than routine minor development.
- ** The Chief Planning Officer has the power to instruct that any planning application should be referred to Committee if it meets this criteria.
- *** Double check the number of representations and their materiality when the trigger point is close. Seek manager advice if necessary.