

**REPORT FOR: PLANNING COMMITTEE
(NON-EXECUTIVE)**

Date of Meeting: 29 May 2013

Subject: Scheme of Delegation and Permitted Development

Responsible Officer: Stephen Kelly – Divisional Director – Planning

Exempt: No

Enclosures: Appendix 1 - Revised Scheme of Delegation
Appendix 2 – Guidance Note on assessment of prior approval notifications

Section 1 – Summary and Recommendations

On 9th May the Government announced sweeping changes to “permitted development.” These changes introduce new forms of decision making for the Local Planning Authority and enlarge the extent of the “prior approval” process to include new classes of development. This report seeks to amend and extend the previously approved scheme of delegation dated March 2012 to make provision for the new provisions. In addition, the report seeks to use the opportunity provided by the proposed wider changes, to refine the extent of delegation in respect of S106 agreements, and to extend the scheme to include applications for Listed Building Consent conditions.

Recommendations:

The Committee is requested to:

1. Approve the revised Scheme of Delegation to the Divisional Director of Planning annexed as Appendix 1.
2. Approve the Guidance Note on the assessment of prior approval notifications annexed as Appendix 2.

Section 2 – Report

Background

The Council like most authorities seeking to ensure the effective and efficient delivery of statutory functions provides for the delegation of routine and technical/non controversial decisions in respect of its planning and building control responsibilities, to its more senior officers. Those officers in turn, seek to delegate decisions to front line staff where there are operational and user benefits in doing so.

On 9th May, following a period of public consultation, the government announced sweeping changes to the provisions of the Town and Country Planning general Permitted Development order. The changes come into force on 30th May 2013. The changes extend the scope of permitted development in respect of specific classes of development and to introduce new “permitted development” rights for a range of development activities that previously required planning permission. Associated with the changes, the new Permitted Development “order” introduced new obligations on the Local Planning Authority in respect of consultation, and the assessment of objections, as well as requiring “prior approval” for a wider range of formerly material planning considerations, in respect of certain classes of new permitted development. An outline summary of the changes is produced below.

The new provisions are considered flawed by a number of bodies and may be subject to judicial review. Officers have produced a guidance note (at Appendix 2) for members of the public setting out the policy approach to the assessment of application for prior approval under the new regime. Given the very short turnaround before the introduction of the powers, and the late publication of the proposals (on 9th may), this document is still in development. Nevertheless, on the assumption that the new permitted development provisions come into effect on 30th may, officers are making arrangements to be ready for the change insofar as it is possible to do so with the information currently available.

The new provisions are not currently covered within the existing scheme of officer delegation. Given the expectations on turnaround times in respect of the operation of the prior approval and permitted development process, and the default position in the event that a notification of the LPA decision is not received within specified timescales, the scheme of delegation requires amendment. Amendments are also required in order that officers can seek to bring effect to the changes without significantly impacting the work of the committee, or the efficiency of the process itself – particularly as at the present time, there is no fee for the process to help cover the costs incurred.

Officers have also used the opportunity created by the revision, to refine the scheme of delegation to correct an anomaly whereby applications to vary a condition on Listed Building Consent require Committee approval.

New Permitted Development

The changes announced on 9th May cover the following areas:

Householder

Outside of conservation areas, and the curtilage of a listed building, for a period of 3 years, the permission to construct single storey extensions to dwelling houses is increased from 3m from the rear wall of the original dwelling house (for terraced and semi-detached properties) and 4m (for detached homes) to 6 and 8m respectively. At the same time, the height of extensions measured from the boundary has increased from 3m to 4m. Before taking advantage of the new provisions, the developer must however write to the Council setting out the details of the proposals and a plan showing the proposed development. The Council must write to owners of adjoining properties to ask whether they object to the proposal. In the event that no objections are received, the developer may proceed. In the event that objections are received, the Local Planning Authority may require further information to be submitted and must give prior approval to the proposals having regard to the impact of the proposals on the amenity of the adjoining premises.

If the LPA fails to notify the developer whether prior approval is given or refused within a period of 42 days following the date the developer provided the LPA with written details of the proposed development, the development may proceed.

Minor Operations

The scope of permitted development for the erection of boundary fences, gate, wall or other means of enclosure is extended to allow schools to erect fences up to 2m in height adjacent to a highway (instead of the 1m for all other classes of development).

Changes of Use

New classes of permitted development are introduced:

Class D

Change of use of a building to a flexible use falling within either Class A1 (Shops), Class A2 (Financial and professional Services) Class A3 (Cafes and restaurants) or Class B1 (Business) from a use falling within classes A1, (Shops), Class A2 (Financial and Professional Services), Class A3 (restaurants and Cafes), Class A4 (drinking establishments), Class A5 (hot food takeaways), Class B1 (Business), Class D1 (non-residential Institutions and Class D2 (Assembly and Leisure).

The permission is valid for a single continuous period of 2 years beginning on the date the building and land begin to be used for the flexible use.

This permission is limited to no more than 150 square metres of floor space and subject to the building not being a listed building. The right can only be exercised once (the 2 year period cannot be renewed). Notification to the LPA is required before the use begins

Class J

Changes of use from offices (Class B1A) to residential (Class C3). This provision is subject to the building being in use or the last use of the building was as Class B1(a) and a provision that before development takes place, the developer shall apply to the LPA to determine whether prior approval is required as to:

- Transport and Highway risks
- Contamination risks on the site; and
- Flooding risks on the site.

Class K

Changes of use of any building (except a listed building) used within class B1 (Business), C1 (Hotels), C2 (residential institution), C2A (secure residential institution) and D2 (Assembly and leisure) to use as a state funded school. Before the development takes place, the developer must apply to the LPA as to whether “prior approval” is required in respect of:

- Transport and Highway Impacts
- Noise impacts of the development
- Contamination risks on the site.

Class M

Changes of use of any agricultural building to a use as Class A1 (Shops), Class A2 (Financial and professional services), Class A3 (restaurants and cafes), Class B1 (business), Class B8 (Storage and Distribution), Class C1 (Hotels) or Class D2 (Assembly and Leisure). The change of use is limited to buildings under 500 square metres or buildings which are not listed buildings, , not within a safety hazard zone or part of a military explosives storage area and have been solely in agricultural use. In specific circumstances, prior approval is required in respect of:

Transport and Highways Impacts
Noise impacts of the development,
Contamination risks
Flooding risks.

Temporary Uses

Use of a building (other than a listed building) and any land as a state funded school for a single academic year. The site must first however be approved by the relevant Minister for such use and reverts to the former use at the end of an academic year. The relevant Minister must also notify the Local Planning Authority of the approval and proposed opening date of the school.

Alterations to industrial premises

The alteration to permitted development increases for a temporary period, the size of an extension to industrial premises that can be constructed under permitted development from 235 sq.m to 500 sq.m or 50% of the original floor space. The provision provides for a post development notification process to the LPA.

Telecommunications

These serve to remove the obligation for prior approval for all telegraph poles and broadband equipment cabinets in conservation areas.

Extensions to Offices

The proposals amend part 41 of the Order to permit for a period of 3 years extensions to office buildings of up to 50% or 100 square metres from 25% or 50m currently. The works are required to be completed by 30 May 2016 and the LPA notified of the completion of the development.

Extensions to Shops, catering, financial and professional services establishments

Part 42 of the order is amended to permit extensions up to 50% or 100 square metres whichever is the lesser. This is an increase of up to 50 Sq.m or 25% compared with previous permitted development rights. The changes also exclude the prohibition of building within 2 m of a boundary unless the premises adjoin land in residential use. The works are required to be completed by 30 May 2016 and the LPA notified of the completion of the development.

Listed Buildings and S106

Under the current scheme of delegation, in most cases, applications to vary a planning condition is delegated to officers. In the case of listed building consent, an application to vary a condition requires committee authorisation. In 2 recent cases, this anomaly has caused frustration and delay to the process of decision making, which has undermined the delivery of projects. It is proposed, in light of the other changes to the scheme, that this anomaly is corrected, and such decision, subject to the controls in the Scheme of delegation, be delegated to officers. It is also proposed to amend the qualifying period for delegated decisions on the variation of S106 agreements to bring this in line with the recent legislative changes on applications to vary such agreements.

Scheme of Delegation

The effect of the new regime is to extend substantially the scope of prior approval procedures (from telecoms and agricultural buildings) to include new school, offices and householder developments. The Legislation sets out that in some cases, consultation is required with the highway authority, transport undertakings and environment agency, with neighbouring properties and by site notice.

Determination of the prior approval process requires a short turnaround in decision making, usually no more than 42 (for residential and 56 days. Failure to notify a part of the outcome amounts to approval of the development by "default."

The existing scheme of delegation provides for officers to determine applications for prior approval in respect of telecommunications development. The revised scheme of delegation seeks to enable officers to:

- Determine the validity of an application submitted under the new notification and prior approval processes.

- Determine the appropriate level and form of consultation to take place in the event of such applications
- Determine whether any further information is required to be submitted to enable the LPA to establish the impacts of the development as part of the prior approval process.
- Determine whether prior approval in respect of householders and all other forms of development should be required, approved or refused and to issue decisions on behalf of the LPA to that effect.
- Determine the process to be followed in the event that an appeal to the Councils decision on Prior approval is made.
- Determine the validity of notices of completion of development submitted in accordance with the Order.

The specific changes are highlighted in a tracked changes draft of the revised scheme of delegation at Appendix 1.

Policy Approach

In order to assist officers, applicants and their neighbours in the consideration of notifications made under the above regime, and to help ensure a consistent and transparent approach to the application of the process, officers are preparing some supplementary planning guidance notes. The new regulations are silent on the role of the development plan, but explicit reference is made by the Secretary of State to the National Planning Policy Framework in providing the policy basis for the judgement of applications. Harrow's Core Strategy is one of only a handful of Development Plan documents that are compliant with the NPPF. Together with the emerging Development Management DPD's the Council therefore has an up to date policy base which informs all other planning decisions. Whilst acknowledging the intention of the new provisions is to enable more development to take place, officers consider that it is in the interests of all parties that a coherent and clear published framework is made available. The support of the Planning committee to the use of this document is therefore sought.

Options considered

The new legislative provisions require refinement of the existing scheme of delegation, to enable officers to make decisions proportionately and promptly, having regard to the default provisions in the Order (i.e. that a decision will be deemed to be issued in favour of a development if notification to the contrary is not received within a specified time.

In the event that the SoD is not changed, all decisions above will have to be reported to the planning committee for a decision. Officers have considered whether a delegation to officers for the procedural changes only would be appropriate. However, the scope of the existing scheme of delegation would usually capture all of the other changes detailed regarding minor and householder development and the proposed extent and level of delegation is not considered to be dramatically changed as a consequence of the proposed amendments outlined – save in respect of scheme where by virtue of timing, the failure to issue a decision on a prior approval application which by virtue of its significance or local interest, would result in a default approval. In those

circumstances, to avoid such circumstances, officers would endeavour to consult with the relevant Portfolio Holder prior to making a decision.

Implications of the Recommendation

Financial Implications

The legislative changes proposed have potentially significant cost impacts associated with them, both through direct processing costs and the potential follow on monitoring and compliance costs. At the time of drafting the report, there is no proposed fee for these prior approval applications – although the legislation does provide for a fee. Previous assessments of the costs of making decisions within the Planning function have highlighted that the Committee route involves considerably greater processing cost than delegated decisions. The proposed change to the scheme of delegation accordingly seeks to contain, as far as possible, the additional costs associated with introducing this new legislation.

Risk Management Implications

Risk included on Directorate risk register? No

Separate risk register in place? No

The proposed revisions to the scheme of delegation improve the risk position of the Council by removing scope for process failure (arising from delays in the planning committee process) and complaints arising from the associated breakdown in delivery that would take place if such a process was not fully enacted in time for the introduction of the new measures.

Equalities implications

Was an Equality Impact Assessment carried out? No

There are no envisaged differential consequences of the proposed adjustment to the scheme of delegation.

Corporate Priorities

The proposed scheme of delegation and member call in protocol are consistent with the promotion of involved and united communities – by promoting improved access and clarity on the procedures for decision making in light of the external, legislative changes imposed upon Harrow at short notice.

Section 3 - Statutory Officer Clearance

Name: Kanta Halai



on behalf of the
Chief Financial Officer

Date: 15 May 2013

Name: Abiodun Kolawole



on behalf of the
Monitoring Officer

Date: 16 May 2013

Section 4 - Contact Details and Background Papers

Contact: Stephen Kelly, Divisional Director – Planning 020 8736 6149

Background Papers:

Town and Country Planning (General Permitted Development)
(Amendment) (England) order 2013

Scheme of Delegation - Attached

Policy Interpretation for Prior Approval - Attached