

LONDON BOROUGH OF HARROW

Meeting:	Development Control Committee
Date:	7 th September 2004
Subject:	Review of Planning Delegation Scheme
Responsible Chief Officer:	Joint Report of the Borough Solicitor and of the Chief Planning Officer
Relevant Portfolio Holder	Planning, Development, Housing and Best Value
Status:	Part 1
Ward:	None
Enclosures:	Appendix 1 Proposed Scheme of Delegation Appendix 2 Current Scheme of Delegation Appendix 3 Impact of Proposed Scheme on Committee Agendas/Delegations – Year August 2003-July 2004

1. **Summary / Reason for Urgency (if applicable)**

- 1.1 This report reviews the scheme of delegation, proposes the adoption of a new framework, and seeks Committee agreement to the proposed delegated arrangements.

2. **Recommendation (for decision by the Development Control Committee)**

- 2.1 The Committee is recommended to agree the delegated authority to the Chief Planning Officer to determine applications as set out in the amended agreement in Appendix 2 of this report.

FOR DECISION

REASON: To enable the Committee to review the current scheme of delegation and to consider an appropriate replacement scheme in the light of continuing concerns regarding meeting Government planning targets and the threat of ODPM intervention if performance is not improved and sustained.

3. **Consultation with Councillors**

- 3.1 None carried out.

4. Policy Context (inc Relevant Previous Decisions)

- 4.1 Between 1992 and 1999 the former scheme of delegation was amended on a number of occasions by Council and the Planning Committee. These revisions did not modify the basic format, which was difficult and confusing, and was open to misinterpretation and challenge.
- 4.2 The context for the review of the scheme at that time was provided by:
- the increasing planning application workload;
 - the Government's revised Best Value Performance Indicators for dealing with planning applications in 2002 / 03; and
 - Planning Services' response to the recent Best Value Inspection.
- 4.3 The Development Control Committee considered a report on changes to the scheme of delegation on 3 September 2002 but resolved not to agree any changes at that time.
- 4.4 A further report was submitted to the Development Control Committee on 15 January 2003, and the current scheme of delegation was agreed. The scheme was implemented during the course of the year but only became fully operational in late 2003.
- 4.5 The current scheme follows the general format of a 'prescribed' approach, listing all the cases where applications are to be determined by officers. A copy of the operational scheme is attached as **Appendix 2**.

5. Relevance to Corporate Priorities

- 5.1 This report addresses the Council's stated priority of enhancing the environment of the borough.

6. ODPM Report on Harrow's Planning Performance

- 6.1 The 'Service Improvement Plan 2004/05 – 2006/07' report to this Committee and Cabinet in April this year highlighted the inspection by consultants for ODPM arising from previous poor performance against Best Value Performance Indicators (BVPIs). Subsequently their report has been received accompanied by a covering letter from Keith Hill MP, Minister for Housing & Planning. Copies are appended to the report on the ODPM Evaluation of Planning Performance, also on this agenda.
- 6.2 The Minister's letter refers to 'ongoing serious concerns' that the Council has not met performance standards for 2003/04 and that "*further measures may still be necessary to improve performance*". The Council is required to map out a "*trajectory of proposed improvement to meet government targets*" to be endorsed by the Chief Executive and to be agreed with the Government Office. The Government Office will then assess performance on a quarterly basis. If

performance falls below trajectory the Government Office will provide quarterly reports to ODPM. The 'engagement' of the Government Office will be reviewed at the end of 2004/05.

- 6.3 It is clear from the letter that ODPM is taking planning performance in general and Harrow's record in particular very seriously, and failure to meet a 'trajectory of improvement' in the future will result in a higher level of intervention. The Minister is requiring the Chief Executive to take personal responsibility for performance against the trajectory. To avoid failure and intervention it is imperative that the Council can demonstrate not only continuing improvement but its ability to sustain such improvement in the future.
- 6.4 The area of specific concern is performance on 'minor' applications, where performance for the last three years to 2003/04 has remained at 37% in 8 weeks compared with the BVPI target of 65%, and the 'standards' target for 2004/05 of 58%.
- 6.5 The Improvement Plan report specifically highlighted the problem area of meeting the 'minor' application deadline for cases considered by Committee. Whereas 70% of delegated minor application are determined within 8 weeks, the figure for those decided by Committee is only 10%. It is critical that the scheme of delegation is amended to cover a higher proportion of minor applications if the threat of further intervention it to be avoided. Similarly, those 'other' applications which are determined by Committee are also unlikely to be dealt with within the 8 week period. Further delegation of 'other' applications will therefore also help the overall planning application performance.

7. **Background Information and Options Considered**

- 7.1 The purpose of this report is to review the current delegated scheme in the light of:
1. the continually increasing planning application workload;
 2. the organisational and service improvements agreed by Cabinet on 20 April 2004 for the Planning and Development service as a response to the ODPM's requirement for a 3 year service improvement plan to secure, inter alia, continual improvements in performance in determining planning applications;
 3. continuing Government concerns regarding the Council's performance against Best Value Performance Indicators;
 4. the specific difficulties in dealing with non-delegated minor applications within 8 weeks;
 5. the guidance in the report, *Delivering Delegation – a guide to delegation schemes*, by the Office of the Deputy Prime Minister (ODPM) and the Local Government Association (LGA) published in March 2004;
 6. The current scheme of delegation results in a significant number of applications, the majority made by local people, being delayed when they could be dealt more quickly and without controversy.

1. Planning Application Workload

- 7.2 Planning application workload has continued to rise, as explained in the service improvement plan report. In 2003/04 there has been a 10% increase in applications received (2850 to 3146), and a 13% increase in applications determined (2475 to 2818).

2. The Service Improvement Plan

- 7.3 The report endorsed by Cabinet on 20 April 2004 included an improvement action to review the scheme of delegation. Prior to the adoption of the current scheme in January 2003 the percentage of delegated applications was within the range of 80-85%, at a time when the Government's Performance Indicator target was for a minimum of 90%. The current scheme was adopted with the intention of increasing that percentage to 90%.

- 7.4 During the course of 2003/04 the percentage of delegated applications remained around 85-86%. The figure for the final quarter is 86%, and for the year-end 87%. This percentage equates to 2446 delegated applications out of a total of 2818 decisions in 2003/04.

- 7.5 It has become clear during the course of the year that there are a number of shortcomings with the current scheme of delegation:

- despite the slight improvement in the % of applications delegated, Harrow has only progressed from the fourth quartile to the third quartile and remains behind the majority of London planning authorities, which determine between 90 and 95% of applications through delegation
- Development Control Committee meetings have remained consistently busy with a range of applications varying from 30 to 55 per meeting in the last 12 months
- the April 2004 meeting considered 55 planning applications, excluding 12 main item reports, and the Service Improvement Plan report
- it is quite apparent from each meeting that there are still a number of applications on the agenda that are not in any way controversial, not subject to any specific debate or consideration by the Committee, and their inclusion on the agenda is therefore questionable
- in hindsight, the adoption of an 'inclusive' scheme of delegation has been found to be flawed - whilst it is relatively easy to identify categories of applications to be excluded from delegation it is more difficult to list all those categories for inclusion. The 'exclusive' approach is recommended by ODPM and LGA
- it is also clear that without a review of the scheme of delegation the necessary improvement to planning applications performance will be hindered and delayed. This is particularly relevant to the 'minor' category of

applications where performance remains well below the national and local target figure

3. ODPM / LGA Guidance – Delivering Delegation

7.6 The LGA guidance on Delegation, jointly published in March 2004 with the ODPM, is endorsed by Keith Hill, Minister of State:

“...This review is timely and welcome given our planning reform programme and its dependence on robust and effective processes....

Making the best use of delegated powers has been identified by the Audit Commission as one of a number of ways to reduce delays in making decisions on planning applications without compromising the quality of those decisions. Indeed, I firmly believe a good scheme of delegation is integral to reconciling democratic accountability with the need to deliver speedy development control decisions and its importance should not be underestimated.

Maximising the number of decisions made under delegated powers allows councillors to focus on those applications that require additional scrutiny and where they can add value in balancing conflicting pressures. Delegating individual planning decisions to officers has made a major contribution to ensuring the appropriate allocation of resources when dealing with certain types of application and improving the effective and timely processing of planning applications...”

7.7 Delegation may be defined as a chief or designated officer taking executive action on behalf of the Council, and determining planning applications and related matters, in accordance with clearly stated and published rules.

7.8 The legal basis for delegation is Section 101 of the Local Government Act 1972, as amended. Section 100 (G) (2) requires that a list of powers exercisable by officers should be maintained and open to public inspection. Elected Members determine the basis on which a delegated agreement operates, the level of member involvement and the circumstances in which an officer’s delegated power to make a decision may not be exercised.

7.9 All delegated schemes fall between the extremes of the two examples below:

- all matters being delegated to an officer, with exceptions being defined – the ‘by exception’ approach
- the delegated power being prescribed in terms of type of application and circumstances which must exist for the power to be exercised

7.10 The LGA recognises the need to provide for local discretion in the drafting and operation of delegation agreements and has decided that the production of a national code of practice would be too prescriptive an approach. However, the LGA does urge the adoption of the ‘by exception’ approach, and recommends that all councils review their arrangements in light of the benefits offered. Such an approach is more likely to provide greater flexibility and clarity of understanding. This approach is strongly supported by the Planning Officers Society (POS).

7.11 The numerous benefits of delegation are seen as:

- simplifies procedures and speeds up process
- minimises costs and improves service delivery within budgetary limits

- releases officer resources to focus on other equally important areas of work to achieve service improvement
- eases lengthy unmanageable committees and reforms committee practice
- removes applications which elicit no member discussion and evaluation at committee
- clarifies the current system and protects member involvement
- increases officer performance and quality
- is in line with a Plan-led system
- is best practice

7.12 Delegation is **not**:

- a process designed to transfer power from elected members to officers
- a method to dilute the transparency of the Development Control process

7.13 A well-constructed delegation agreement, operating within clear guidelines, should be able to deliver development control decisions that are consistent with Council policy, in a routine and speedy manner. This can be achieved without prejudicing the participation of local residents and others, or affecting the quality of service delivery.

7.14 Delegation is commonly perceived to be one important means of achieving high quality customer service objectives. It is a crucial factor in achieving, or approaching, the BVPI 109 targets set for the determination of Major, Minor and Other applications. In summary, delegation can be the key to providing a development control system that is responsive, efficient and meets the expectation of applicants that their applications will be dealt with within the time limits set by the Government.

The well constructed Delegation Agreement

7.15 All schemes of delegation fall between the two broad models already referred to:

- the first includes the prescription that all applications may be deemed as determined under delegated powers, unless they fall into defined exceptional categories
- the second approach lists all those areas where the delegated powers apply.

7.16 The LGA favours an approach that adopts the principles of simplicity, a logical approach, and ease of understanding both by users, applicants / agents and interested parties alike. The LGA considers that the 'by exception' model offers these benefits and has the advantage of being easily adapted to local situations.

7.17 The POS has assembled a series of key points to demonstrate transparency, probity and fairness in decision-making, under the headings of policy; customer focus; process and procedures; performance measurement, and outcomes.

7.18 Particular advice in relation to delegation includes the following:

- decisions made, whether by committee or officers, should be consistent and in accordance with the relevant section of the Town & Country Planning Act
- there should be a clear and appropriate schedule of delegated powers and protocol for referral of applications to committee
- the scheme of delegation to officers and referral to committee should be clear and transparent to officers, staff and councillors
- clear and published policies should set out how and when reports are available to the public
- there should be opportunities to address the Planning Committee with all interested parties notified and made aware of their role at the meeting and the likely format of the meeting
- clear reports with unambiguous officer recommendations
- level of delegation above 90%

The member interface

7.19 The LGA/ODPM guidance advises that the role of members in arbitrating between competing arguments is crucial to the democratic process. Yet if the process is to work effectively there must be proper administrative distinction between the mundane and the controversial. An effective scheme of delegation will ensure economical use of time and allow focus on the more complex or contentious applications.

7.20 Councillors may feel understandably threatened by the removal of their involvement in a system that can directly affect their constituents. Yet, elected members remain in complete control of the delegation process – they decide the council's development plan policies within which all applications are assessed. They also determine other council policies, standards and guidance within which context applications may be considered. They also determine the terms upon which a delegation agreement operates, the level of member involvement and the circumstances in which an officer's designated powers to make a decision may not be exercised.

7.21 The guidance outlines some principles to ensure clarity in understanding respective roles and remits within a delegation scheme:

- rules for member involvement should be strictly defined and adhered to
- an agreed process for member involvement in, and referral of, applications

- decisions to be explained to all concerned
- applicants and objectors to be encouraged to meet case officers to express their views – to assist in transparency and to meet Article 6 of the declaration of human rights
- scope of scheme of delegation to be as objective as possible
- appropriate arrangements for filtering referral requests from members who disagree with officer recommendations, for example, a provision to prevent a member who has been lobbied about an application from referring the application to committee
- appropriate arrangements for reviewing the working of the delegated scheme by periodic monitoring
- a system of notifying councillors of decisions, preferably as information circulated outside the committee to avoid debates about previous decisions
- parallel delegation for enforcement action

Best value and performance improvement

7.22 Making the best possible use of delegated powers has been identified by the Audit Commission as one of a number of ways to reduce delays in making decisions on planning applications without compromising the quality of those decisions. In the pursuit of the ODPM's performance aspirations, delegation schemes must recognise the wide variety and differing complexity of applications and the need for accountability, involvement and open debate. This is especially the case in terms of larger and more complex cases. Frustration may find expression in reluctance to accept delegation of planning application decisions.

Transparency – public access to documents on delegated decisions

7.23 The LGA encourages councils to introduce measures to ensure that the public understand the working of the delegation system and the reasoning behind it – leaflets on delegation, explaining processes and rights of appeal are commended. Making all application files available, as is the long-standing system in Harrow, is seen as general good practice, and in the interests of promoting delegation and Human Rights.

7.24 The view of the Local Government Ombudsman is that reports should be produced detailing the material considerations, views, objections and reasoning behind delegated decisions and that these should be available for councillors and the public. Delegated reports at Harrow are prepared to a specific, typed, format to cover all such matters. As members are aware, the Government has recently extended the provisions on information to be included in the planning register – namely, that reasons for the grant of planning permission have to be summarised in all decision notices.

Harrow Proposed Scheme of Delegation

- 7.25 In the context of our experience of the current scheme, and the clear advice from the LGA and ODPM, it is proposed to adopt a scheme of delegation based on the 'by exception' model, with all applications considered for delegation, unless they fall into one or more of the defined categories of exception.
- 7.26 The proposed scheme is set out in **Appendix 1**.
- 7.27 The analysis set out in **Appendix 3** shows the impact the recommended scheme of delegation could have in terms of numbers of items on Committee agendas and increase in delegation rates. The table shows what would have been the effect on Committee agendas for the year August 2003 – July 2004 if the proposed scheme had been in place.
- 7.28 On the basis of this historical analysis, the percentage of applications determined under delegated powers would have risen from approximately 87% to approximately 94%. The table shows actual numbers of applications in the proposed categories of 'non' delegated applications (columns a-l). Column (j) 'Call-ins' shows the actual number of applications which were on agendas at the request of nominated members. With a higher proportion of delegations it is likely that this number would rise which would reduce the delegation rate. Members should appreciate that the objectives of increasing delegation, ie, to improve performance against the Government targets and demonstrate the Council's commitment to eradicating problems in performance, would be jeopardised if the numbers of 'Call-ins' increased significantly.

8. Consultation

- 8.1 None undertaken.

9. Finance Observations

- 9.1 There are no direct financial implications at this stage.

10. Legal Observations

- 10.1 Dealt with in body of report.

11. Conclusion

- 11.1 The LGA / ODPM and the POS all favour moving towards the more widely adopted 'by exception' approach to delegation rather than the comprehensively prescribed approach. The independent consultant's evaluation of Harrow as a planning standards authority gives a strong endorsement to the need for increased delegation in improving performance and effectiveness in planning application decision-making.
- 11.2 The 'by exception' model set out in **Appendix 1** is intended to assist in performance improvement whilst delivering an effective and transparent process in determining planning applications.

11.3 Further delegation is essential to ensure that the Council meets the ODPM concerns in respect of performance against BVPIs and ends the threat of 'intervention' in the Council's planning function.

11.4 Committee is recommended to agree the adoption of the proposed scheme of delegation.

12.0 Background Papers

12.1 Delivering Delegation – a guide to delegation schemes
Joint ODPM / LGA report March 2004

13. Author

13.1 Frank Stocks, Development Control Manager, ext 2498