REPORT FOR: Planning Committee

Date of Meeting:	11 October 2011
Subject:	Scheme of Delegation and Member protocol
Responsible Officer:	Stephen Kelly – (Divisional Director, Planning)
Exempt:	No
Enclosures:	Appendix 1 – Planning and Building Control scheme of delegation Appendix 2 Member protocol for call in of applications

Section 1 – Summary and Recommendations

This report sets out to update, refine and consolidate the existing schemes of officer delegation for Planning and Building Control decisions. The report also provides written clarification on the provisions for the practice of members "call in" of planning applications to the Planning Committee, which has operated over recent years via the nominated members.

Recommendations:

The Committee is requested to:

1. Approve the scheme of delegation to the Divisional Director of Planning attached as Appendix 1.

2. Approve the member protocol for call in of planning applications by the Chairman and Nominated Member to the Planning Committee attached as Appendix 2.

Section 2 – Report

Background

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

It is good practice, given the highly regulated and evolutionary nature of planning and building control, to keep any scheme of delegation under review. Officers from the Planning Division and Legal Services have therefore undertaken a comprehensive review of the existing provisions over the last few months to ensure that the Council's scheme of delegation (in relation to planning and building control functions) remains fit for purpose; balancing the principle of subsidiarity with accountability and the requirements for a cost effective and responsive service.

In July 2011, the Planning Committee considered a report by officers which proposed some changes to the provisions allowing nominated members to request that an application be determined by the planning committee (in accordance with proviso B of the existing scheme of delegation to the Divisional Director of Planning dated 2 May 2007). The recommendations at that time were not accepted and officers have therefore sought to review the provisions to address the concerns expressed, and to maintain the absolute discretion of a nominated member to ask that an application be referred to the committee.

Current situation

In recent years, delegation of planning and building control functions of the Planning Committee, have been encapsulated within a range of documents, and within the constitution. As the Council has sought to respond to users' requirements – for more effective and immediate enforcement for example - specific adjustments have been made to the scheme itself. Most recently in September 2009 enforcement delegations were extended to provide greater scope for action by officers. This led to a 100% increase in the number of enforcement notices served, the initiation of the first cases of direct action taken by the Council against non compliance with the relevant enforcement notices and successful convictions for planning offences.

New legislative provisions such as the introduction of powers to deal with "non material" amendments on planning applications and the ongoing need to ensure that the scheme of delegation is clear for all, has prompted officers to review existing provisions and to make a number of suggested modifications to the scheme (appendix 1). Given the relationship with proviso B within the existing scheme of delegation, the procedure for member call in has also been reviewed following the Planning Committee meeting on 13 July 2011, and a revised protocol has been drafted (appendix 2).

Revised Scheme of delegation

The revised scheme of delegation now captures the three planning and building control functions of the Committee (i.e. General Development Management, Building Control and Enforcement) in one document.

The underlying principles of delegation, and the triggers in respect of referral to committee are largely unchanged, save to provide for the Divisional Director of Planning to make a judgement on the materiality of any departure from policy when considering the referral of an application to planning committee on this basis alone (see proviso D and part 1 paragraph 14 of Appendix 1). This is to provide explicitly for the circumstance where there is a breach of a policy requirement set out in an SPD (such as the depth of an householder extension) but where officers consider that there is scope within the terms of the overall policy context, as provided for in the 2004 Planning Act, to conclude that the breach of policy is not significant or material. The provisions would still require referral of an application to the committee where there was a conflict with the UDP proposals map or an allocation within the emerging Site-specific allocations DPD as part of the LDF. The proposals also clarify the position on small-scale development on Council land (proviso C)

Part 1 of the scheme of delegation seeks to update and refine the scheme of delegation adopted by the Committee in 2007. Notably, the update provides for minor material and non-material amendments to applications (Para. 10 and 11 respectively), it re-drafts the provisions in relation to prior approval – to explicitly refer to the 2 stages of the process and reflect the predominant types of application (Para 6), clarifies the authority of the Divisional Director of Planning in all aspects of the validation of planning applications to enable effective delegation within CCAD (Paras 15, 24 and 25) and reflects recent PINS practice of requesting LPA responses to proposed procedure to be adopted for appeals as opposed to enabling nomination of appeal procedures. Para 14 provides for the Divisional Director of Planning to assess the materiality of a departure from planning polices (London Plan and Harrow UDP/LDF and SPD's) and provides for circumstances where referral to the GLA/Secretary of State prior to determination is required.

Part 2 of the scheme, reflects the Planning Committee functions in respect of the Building Act 1984 and Regulations pursuant to that Act. The principle elements of receipt, registration and determination of applications or notices submitted under the act are outlined, recognising that the determination of compliance with the Regulations and the "approved documents" encapsulating the UK building regulations involves a process of collaboration and partnership with the construction industry and homeowners. The competitive nature of Building Regulation compliance means that significant delegation has traditionally existed within the profession. For some years, practice within all LABC bodies has relied upon the considerable practical experience and expertise of the building control surveyors, working to tight

(24hr – 10 day) timetables. No changes are proposed to these provisions under the consolidated scheme.

Part 3 of the scheme relates to all planning and building control enforcement. This section, whilst consolidating both planning and building control enforcement into a single document for the first time, does not alter or extend any of the existing powers delegated to the Divisional Director of Planning.

Member Call in

The revised proposals provide a clearly defined procedure for members to adopt when requesting that the Planning Committee determine a planning application (s) that would have otherwise have been determined under delegated authority.

In brief, the nominated member or the chair will submit a written request to 'call-in' a planning application. The Divisional Director of Planning will consider the request, unlike the earlier proposals – presented to the Committee in July - the nominated member or chair still has the right to insist upon a decision being made by Planning Committee where this is justified; but where they remain satisfied that the issue has been properly addressed by the planning service, there is provision to enable the decision to be made under delegated powers.

The appended protocol therefore seeks to create a clear process and timetable for such requests (to support clarity around the Councils decision making process) and provides for formal forms and a record of decisions on each case. No specific changes, beyond the minor alteration to proviso B, are required to the Scheme of delegation.

Options considered

The existing delegations and member call in provisions could have been retained. The existing provisions are however somewhat dated in their drafting and disparate. Accordingly, they are inconsistent with the corporate objective of ensuring that residents and users of the service are able to understand how the Council makes its decisions. Moreover, given recent developments, the delegations do not explicitly address some existing anomalies and operational requirements associated with changes to the planning system, and the Council's processes and governance, detailed above.

Implications of the Recommendation

Financial Implications

The revised member call in protocol and scheme of delegation should assist in providing clarity in respect of the Council's processes for decision-making, this is not considered to give rise to any additional costs. The scope to remove ambiguity to delegated powers, given the differential costs between

committee meetings and delegated decisions should improve the cost effectiveness of the service.

Risk Management Implications

Risk included on Directorate risk register? No

Separate risk register in place? No

The proposed revisions to the scheme of delegation and member protocol improve the risk position of the Council by removing scope for differing interpretation and challenge of the Council's decision-making processes. Particularly, the explicit reference to new legislative provisions and the tidying up and clarification on prior approval, materiality of policy departures and explicit and more comprehensive provisions for officer determination of validity of applications, appeal processes and consultation remove interpretative risks that might have prompted legal challenge of Council decisions.

The clarification, with an explicit process, of the member call in process also reduces risks arising from the uncertain timescales and lack of reasoning provided for such decisions in the past.

Equalities implications

Was an Equality Impact Assessment carried out? No

The promotion of more explicit and accessible procedures should enable greater comprehension of the Councils decision-making process. There are no other envisaged differential consequences of the proposed adjustment to the scheme of delegation and member protocol.

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 planning and building control.

Section 3 - Statutory Officer Clearance

Name:. Kanta Hiriani	x	on behalf of the Chief Financial Officer
Date: 30 September 2011		

Name: Abiodun Kolawole	x	on behalf of the Monitoring Officer
Date: 27 September 2011		

Section 4 - Contact Details and Background Papers

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

Background Papers:

Planning Scheme of Delegation dated 2nd May 2007
Enforcement Scheme of Delegation dated 9 September 2009
Member Referral Report to Planning Committee dated 13 July 2011