CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Development Services

TO: Planning Committee 10/2/2010

WARDS: All

REVIEW OF DELEGATIONS

1 INTRODUCTION

1.1 The purpose of this report is to request Members to agree some variations to the existing delegated scheme for planning.

2. RECOMMENDATIONS

2.1 That Members agree the scheme of delegation set out in Appendix 2.

2.2 That the scheme of delegation set out in Appendix 2 takes effect immediately.

3. BACKGROUND

3.1 Planning Committee last reviewed the scheme of delegation for planning on 22 June 2005. A copy of the current scheme is set out in Appendix 1.

3.2 A recent matter has highlighted some gaps and uncertainties in the existing scheme with regards to the determination of requests for 'non-material' amendments to planning applications that have already been approved by Committee. There is a current risk that requests for dealing with 'non-material' amendments to such applications are being dealt with under officer delegated powers when they should not be.

3.3 The power to make 'non-material' amendments has long been a thorny issue for local planning authorities. The government recently inserted section 96A into the Planning Act 2008 to try to deal with the difficulties that had arisen in case law. Government also published associated guidance in November 2009.

3.4 In summary, the new section clarifies the powers a local planning authority has to make a change to any planning permission relating to land in their area if it is satisfied that the change is not material. In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes, on the planning permission already granted.

3.5 From 1 October 2009 an applicant request for a 'non-material' amendment must be on the newly introduced national standard application form. There is no fee at present for such requests, but there is likely to be in the future. An application can also be for a 'non-material' amendment to a condition.
3.6 As an application under S96A is not an application for planning permission, the existing General Permitted Development Order provisions relating to statutory consultation and publicity do not apply. However, before the application is made, the applicant must notify the owner or anyone with an interest in the land the subject of the application. Anyone notified must be told where the application can be viewed, and they have 14 days to make any representations to the local planning authority. The local planning authority has 28 days in which to make the decision, unless otherwise agreed in writing. The applicant has a right of appeal for refusal or non-determination of the application.

3.7 There is no statutory definition of ‘non-material’. The guidance states that this is because it is so dependent on the context of the overall scheme – what may be material in one context may not be material in another. The local planning authority must be satisfied that the amendment sought is ‘non-material’ in order to grant an application under S96A.

3.8 The existing internal officer protocol in relation to dealing with amendments describes ‘non-material’ amendments as “minor changes to approved plans not requiring the submission of a fresh planning application. ‘Material’ amendments are more major changes requiring a new planning application”. The protocol then goes on to describe the factors that are currently taken into account in deciding whether the proposed amendment can be determined as ‘non-material’ (i.e. not requiring a further planning permission) or as ‘material’, in which case a further planning application would be needed for the amendment, which would then be subject to the normal planning application process. The existing protocol is set out in Appendix 4.

3.9 It is considered that a revision to the current delegated scheme for planning is appropriate to clarify the scheme of delegation and in the light of the new section S96A.

4. CONSULTATIONS

4.1 The final draft report was circulated to the following for comment: the Executive Councillor for Climate Change and Growth; the Chair and opposition spokesperson of Planning Committee; Development Control Managers; the Head of Legal services; the Head of Committee Services. This final report takes account of those any comments received where appropriate. Any further comments will be reported at the meeting.

5. THE REVISED DELEGATED SCHEME

5.1 Officers recommend the existing delegated scheme for planning be amended to include a further ‘exception’ category in relation to the determination of applications for ‘non-material’ amendments to developments approved by Planning Committee. This is set out in the proposed new exception category h) of Appendix 2. If agreed, this would mean that all future applications under S96A for ‘non-material’ amendments to developments previously approved by Planning Committee, could only be determined in consultation with, and with the agreement of the Chair, Vice-Chair and Spokesperson for Planning Committee. It is estimated that there is likely to be a no more than 20 such applications in any one year.
5.2 Furthermore if this ‘exception’ (or any variation to it) is approved, existing procedures and the existing protocol will need to be reviewed immediately to ensure that it is implemented effectively. These can be discussed and agreed with the Chair, Vice-Chair and Spokesperson of this Committee, if Members feel this is the appropriate way to proceed.

5.3 The revised scheme also proposes a few other minor changes to improve the process in the light of experience:

- Giving officers delegated authority to issue refusals on ‘Major’ applications where there are no third party representations in support. This would mirror the current arrangements for approvals
- Minor updates to the Schedule describing the scope of applications and consents covered by the scheme of delegation

5.4 For completeness, the existing guidance on Member referrals is attached as Appendix 3.

6. CONCLUSIONS

6.1 In the light of recent events as described above, minor changes are recommended to the existing delegated scheme for planning, principally in relation to the determination of applications for ‘non-material’ amendments to developments previously approved by Planning Committee. If the revised delegation scheme is agreed these would no longer be determined solely by officers under delegated powers, but in consultation with, and with the agreement of, the Members referred to in exception category h) of the proposed scheme. The proposed changes seek to balance the need for efficiency in decision making with accountability.

7. IMPLICATIONS

(a) Financial Implications

7.1 None

(b) Staffing Implications

7.2 None

(c) Equal Opportunities Implications

7.3 None

(d) Environmental Implications

7.4 None

(e) Community Safety

7.5 None
BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:

Report to Planning Committee 22 June 2005 – Review of Scheme of Delegation for Planning
Greater Flexibility for Planning Permissions – Guidance. Department for Communities and Local Government, November 2009

To inspect these documents contact John Summers on extension 7103

The author and contact officer for queries on the report is John Summers on extension 7103

Report file: F/reports/reviewofdelegs/10.02.10

Date originated: 02 February 2010
Date of last revision: 02 February 2010
APPENDIX 1

Cambridge City Council Constitution

Existing Delegations to Director of Environment and Planning in respect of planning and development control

<table>
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<th>Powers delegated by Executive Councillor for Planning and Transport</th>
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<td>d) The application is for development involving a change of use where there are third party representations on planning grounds that are contrary to the officer recommendation and that cannot be resolved by planning condition.</td>
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<td>e) The application involves the City Council as applicant or landowner and the development is not of a minor nature.</td>
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<td>g) The application is submitted by a Member or officer of the City Council.</td>
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<td>h) The application is one where, within 21 days of the date of publication of the weekly list, or within 14 days of receipt of any subsequent material amendment to the proposal, any Member (including County Council Members representing City Wards) requests in writing (including e-mail sent in accordance with the Council’s guidelines), that the application should be determined by Committee, stating the planning grounds on which the request is based.</td>
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<td>i) The application requires a Planning Obligation (or any subsequent amendment thereof) containing terms that are not in accordance with, or are additional to, those required by the Council’s Planning Obligation Strategy.</td>
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<td>j) The application is one that officers consider should be determined by Committee because of special planning policy or other considerations.</td>
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**Note:** Major development comprises:
- 10 or more dwellings, or a site area of 0.5 ha. or more where the number of dwellings is not shown;
- Other developments where the floor space to be built is 1000 square metres (gross) or more, or where the site area is 0.5 ha. or more in size.

A2. To serve Requisitions for Information, Planning Contravention Notices, Breach of Condition Notices, Notices of Intended Entry, Section 215 Notices, and Discontinuance Notices for advertisements (subject to prior consultation with the Head of Legal and Democratic Services).
A3. To instruct the Head of Legal and Democratic Services to commence prosecution proceedings for the display of illegal advertisements (including fly posting) and for non-compliance with any formal notices issued.

A4. To instruct the Head of Legal and Democratic Services to serve enforcement notices under S171 of the Town and Country Planning Act 1990 to remedy a breach of planning control following the refusal of retrospective planning permission.

A5. To instruct the Head of Legal and Democratic Services to serve Listed Building Enforcement Notices under S38 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

A6. To instruct the Head of Legal and Democratic Services to serve notices requiring urgent works to unoccupied Listed Buildings under S54 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

A7. To instruct the Head of Legal and Democratic Services to serve Listed Building Enforcement Notices under S38 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

A8. To instruct the Head of Legal and Democratic Services to serve notices requiring urgent works to unoccupied Listed Buildings under S54 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

A7. To instruct the Head of Legal and Democratic Services to serve a Remedial Notice under Part 8 of the Anti Social Behaviour Act 2003 where there are no third party representations that are contrary to the officer recommendation (subject to prior consultation with the Head of Legal and Democratic Services) and to instruct the Head of Legal Services to commence prosecution proceedings for non-compliance with a Remedial Notice or to carry out works in default.

A8. To make representations as a 'responsible authority' on applications for public entertainment licenses under the Licensing Act 2003.

B1. To determine all applications for works to trees under the Town and Country Planning Act 1990, and for works to hedgerows under the Environment Act 1995, except in any of the following circumstances:

| a) | The application is one where there are third party representations on amenity grounds that are contrary to the officer recommendation and that cannot be resolved. |
| b) | The application is one where, within 14 days of being notified, any Member (including County Council Members representing City Wards) requests in writing (including e-mail sent in accordance with the Council’s guidelines), that the application should be determined by Committee, stating the grounds on which the request is based. |

B2. To serve, and unless objections are received, confirm Tree Preservation Orders and Hedgerow Replacement Notices.

B3. To instruct the Head of Legal and Democratic Services to take enforcement action or instigate proceedings under part (viii) of the Town and Country Planning Act 1990 relating to violations against protected trees, and under S97 of the Environment Act 1995 relating to violations against protected hedgerows.

Note: Notwithstanding the provisions contained within this Scheme of Delegation, officers will use their discretion and judgment to decide whether to refer any matter contained within this Scheme to Committee for determination, which in their view raises contentious, sensitive or significant policy issues, or where it would be otherwise beneficial for the decision to be made by Members.

Schedule referred to in Delegation A1 above

Applications and other forms of consent/notification referred to in Delegation A1 include:

<p>| a) | Outline and full planning permission and any subsequent pre- and post-decision amendments. |
| b) | Reserved matters following outline planning permission and any pre- and post-decision amendments. |
| c) | Renewals of planning permission and any pre- and post-decision amendments. |
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## Proposed Revised Delegations to Director of Environment and Planning

in respect of planning and development control

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| **f)** The application is for the demolition of a listed building or a Building of Local Interest. |
| **g)** The application is submitted by a Member or officer of the City Council. |
| **h)** The application is for a ‘non-material’ change/amendment in relation to a development that was previously approved by Planning Committee or an Area Committee, and the Chair, Vice-Chair and Spokesperson of that Committee object to the exercise of the delegated power within 14 days of notification. |
| **i)** The application is one where, within 21 days of the date of publication of the weekly list, or within 14 days of receipt of any subsequent material amendment to the proposal, any Member (including County Council Members representing City Wards) requests in writing (including e-mail sent in accordance with the Council’s guidelines), that the application should be determined by Committee, stating the planning grounds on which the request is based. |
The application requires a Planning Obligation (or any subsequent amendment thereof) containing terms that are not in accordance with, or are additional to, those required by the Council's Planning Obligation Strategy.

The application is one that **in the opinion of officers consider** should be determined by Committee because of special planning policy or other considerations.

**Note:**

1. Major development comprises:
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A7. To decide whether to serve a Remedial Notice under Part 8 of the Anti Social Behaviour Act 2003 where there are no third party representations that are contrary to the officer recommendation (subject to prior consultation with the Head of Legal and Democratic Services) and to instruct the Head of Legal Services to commence prosecution proceedings for non-compliance with a Remedial Notice or to carry out works in default.

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b) The application is one where, within 14 days of being notified, any Member (including County Council Members representing City Wards) requests in writing (including e-mail sent in accordance with the Council’s guidelines), that the application should be determined by Committee, stating the grounds on which the request is based.

B2. To serve, and unless objections are received, confirm Tree Preservation

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Orders and Hedgerow Replacement Notices.

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MEMBER GUIDANCE NOTE
REQUESTS TO REFER PLANNING APPLICATIONS TO COMMITTEE

1. The scheme of delegation for planning and development control, in clause A1i), allows any Member of the City Council and any County Member representing a City Ward to request that an application be referred to the Committee for determination, provided the request is made within the timescales set out, that it is in writing, and that it states the planning grounds on which the request is made. Late requests should be avoided.

2. Members are advised to check the progress of the application with the case officer before making a request and also to inspect the application file. This may avoid the need for a referral.

3. It is important that the planning grounds for referral are stated in the written request. An information leaflet entitled ‘How to Comment’ explains what factors can typically be considered in assessing planning applications, depending on the circumstances of the case. This leaflet is sent out with neighbour notification letters. Planning grounds can include: whether the development accords with planning policy; whether the development is appropriate for the area; whether the development would cause harm to neighbouring amenity; whether the proposal would cause traffic congestion or be a danger to highway safety. Loss of property value, loss of trade to businesses and moral objections are not planning grounds. The case officer can give further advice if required.

4. Members may feel that a particular planning application raises planning issues of the kind described above that ought to be discussed and determined at Committee, rather than being determined under delegated powers. However, in deciding whether to make such a request, it is important that Members consider their role and responsibility in the decision making process. Advice on this and related matters is contained in the ‘Planning Code of Good Practice’, adopted by Council in September 2004.

5. It is important that Members approach planning applications with an open mind and are able to weigh all the arguments right up to the point at which a decision is made. If in making a request to refer an application to a Committee on which you have a decision making role, you express a firm commitment to support or oppose the application in advance of the meeting, you should not speak as a Member of the Committee or vote. You will, however, be able to speak and vote provided your written comments in support of your request are expressed in a way that makes it clear that you intend to keep an open mind until considering the officer report and all other evidence at Committee. You can obtain further advice on this issue from the Council’s Head of Legal and Democratic Services.

6. On receipt of a written request by a Member for an application to be determined by Committee, the case officer will acknowledge the request in writing or by telephone. The case officer will also check with the Member that it is necessary for the application to be determined by Committee, rather than under delegated powers.
7. Members' representations are summarised in the officer report and also attached as an appendix to the Committee report.

8. It is not appropriate for a Member to request that Committee determines an application if they have a 'prejudicial' interest in it under the Council's Code of Conduct.
EXISTING AMENDMENTS PROTOCOL

Introduction

When development proposals are being put forward it is occasionally necessary to make changes to the plans. There are a number of reasons for this including requests by planning officers, requirements of building regulations or simply as a result of a change of heart by the developer. Although not enshrined in planning legislation it is common practice for local planning authorities to accept amendments to both undetermined applications and approved development. The purpose of this protocol is to help determine the significance of the proposed amendment and how it should be dealt with.

There are two main types of amendments; those which are requested after a decision has been made and those which are submitted before the application is determined. This protocol deals with both types of amendment. There are differences in the approach which should be adopted to each type of amendment; therefore the protocol is divided into post decision and pre-decision amendments.

Amendments – Post Decision

When planning permission is granted the decision notice refers to approved plans and lists the drawing numbers. When amendments to these approved plans are sought it is essential that they be shown on a plan which can be compared with the approved details and listed out in a supporting letter. Amendments should not be considered on the basis of telephone calls or solely written descriptions of the proposed change.

Amendments to plans will either be ‘non-material’ or ‘material’. ‘Non material’ amendments are minor changes to approved plans not requiring the submission of a fresh planning application. ‘Material amendments’ are more major changes requiring a new planning application. Applicants often refer to the term ‘minor amendment’ in requesting that an amendment be dealt with as ‘non-material’.

The issue of whether an amendment is material or not is a matter of professional judgement and a question of fact and degree. It will depend on the nature and degree of change in relation to the approved plans and whether the amendment is likely, or may be perceived to have an additional impact on the amenity of neighbouring properties.

It is also important to remember that the approved plans have been subject to neighbourhood publicity and internal and external consultation, the responses to which may have been different had an alternative proposal been put forward. Particular care needs to be taken in dealing with post decision amendments to applications which have attracted neighbour representations in the first place. A useful guide is that if the nature of the amendment is such that it is felt that further consultation/publicity would have been warranted then it is unlikely that the amendment can be treated as ‘non-material’. It is essential to check the neighbour representations in the case file. If neighbours have specifically asked to be informed of any request for amendments, then you should send them details as a matter of information, even if you consider the proposed amendment to be non-material.
There can be no hard and fast rules. However, the type of changes which may be acceptable as non-material amendments are:

- Alterations to the style of windows/doors where the amount of glazed area is unchanged.
- Alterations to the arrangement of windows/doors in the elevation.
- Alterations to the height of extensions which are not located on the site boundary by up to 10% of the approved height.
- Alterations to the shape of the roof provided that they do not result in an increase in height above the approved height.
- Increases in height of proposed boundary treatment.

These examples should be regarded as independent of one another since cumulative change is an important consideration. For example a proposed amendment which involves a combination of change of window style, arrangement and increase in height of an extension may not be regarded as ‘minor’.

In order to minimise risk in dealing with post-decision amendments, you should use the Preview Meeting and the views of the PDCM to help you reach a view on the decision on whether the proposed amendment is to be treated as ‘non-material’ or not.

If the proposed change does not constitute a ‘non-material amendment’ then planning permission is required.

Plans which detail ‘non material’ amendments will be stamped up as such and filed on the application file.

**Amendments – Pre-decision**

These are amendments which are submitted before a decision has been taken on the application. In most cases they arise as a result of negotiations by the case officer.

There are essentially three types of ‘pre-decision’ amendments:

- Amendments which do not require further consultation to be carried out.
- Amendments which generate the need for further consultation.
- Major revisions which cannot be regarded as amendments and which need to be dealt with in the context of a new planning application.

It is very difficult to describe which of the above circumstances apply in every case. For this reason you should use the Preview meeting and the views of the PDCM to help you reach a view on the advice which you give to applicants. When seeking amendments to a planning application you should always advise the applicant of the way in which the amendments are likely to be regarded. This is most important when a new planning application is required.

Amendments which do not require further consultation to be carried out are generally the types of changes which are described above as ‘non-material’. If you would deal with the change as a ‘non-material amendment’ to an approved plan then you do not need to carry out further consultation (although if neighbours have specifically asked to be informed of any request for amendments, then you should send them details as a matter of information). Care is needed in this assessment. If you are in any doubt as to whether an objector will be affected by the proposed amendment then you should
consult them. It is important to remember that a reduction in scale will not automatically negate the need for further consultation.

Amendments which generate the need for further consultation are those which could have an effect on the views which have already been expressed by neighbours or internal/external consultees. In some cases they may involve changes which address objections to the application. In such cases it is often worthwhile to reconsult neighbours so that they are aware of the changes and can monitor the approved development more effectively.

Major revisions which cannot be regarded as amendments are usually significant deviations from the development as described on the application form. For example including a detached garage in a scheme for an extension or increasing the number of residential units proposed on the site. Another example would be when you are negotiating significant changes to a scheme, for instance reducing a two storey extension to a single storey. The decision to seek an revision which will require a new planning application is normally taken at the Preview meeting.