

Item No. 8.4	Classification: Open	Date: 20 October 2010	Meeting Name: Council Assembly
Report title:		Changes to Scheme of Delegation – Planning Committee and Community Councils – Planning Enforcement	
Ward(s) or groups affected:		All	
From:		Strategic Director of Communities, Law & Governance	

RECOMMENDATIONS

1. That council assembly notes the cabinet resolution of 15 June 2010 to ask council assembly to amend Part 3F: Planning Committee and Part 3H: Community Councils of the Southwark Constitution to make constitutional amendments on the reporting of enforcement matters.
2. That council assembly notes recommendations 10 and 11 of the scrutiny sub-committee's planning enforcement review report as requested by the cabinet's resolution made on 15 June 2010 (see paragraph 5).
3. That council assembly adopt the constitutional changes recommended by the constitutional steering panel, as set out in this report, as follows:
 - Part 3F: Planning Committee – see paragraph 13
 - Part 3H: Community Councils – see paragraph 18.

BACKGROUND INFORMATION

4. On 15 June 2010 cabinet considered a planning enforcement review report from scrutiny sub-committee C following a review of planning enforcement. An extract from the scrutiny report is set out in paragraph 12.
5. Recommendations 10 and 11 of the scrutiny sub-committee proposed the following in respect of the planning committee and community councils:
 - Recommendation 10 - The scheme of delegation in the council's constitution should be amended to facilitate the referral (at the discretion of the head of development management) of planning enforcement decisions to the planning committee.
 - Recommendation 11 - Each community council should receive regular (at least quarterly reports) on planning enforcement issues, building upon the pilots already underway. These should normally be presented by an officer who could answer questions.
6. In the report to the cabinet this recommendation had the support of the strategic director of regeneration and neighbourhoods.

7. The cabinet resolved firstly, that the recommendations of the planning enforcement review undertaken by scrutiny sub-committee C be agreed; and secondly that the recommendations from the report be referred to planning committee, constitutional steering panel, council assembly and chairs of the community councils, as appropriate, for consideration and implementation.
8. Reports were submitted to the meeting of chairs / vice-chairs of the community councils and planning committee on 6 September and 7 September 2010 - comments are set out in paragraph 21. The role of the constitutional steering panel is to give prior consideration to any constitutional change and in doing so it can also make recommendations to council assembly.
9. The constitutional steering panel considered this report on 4 October 2010 and agreed to note that on 15 June 2010 the cabinet asked council assembly to amend the constitution regarding the reporting of enforcement matters. It also noted two of the scrutiny sub-committee's recommendations on planning enforcement and agreed that the proposed constitutional changes set out in paragraph 14 and 19 of this report be recommended to council assembly for adoption.

KEY ISSUES FOR CONSIDERATION

10. The Planning Acts give the council a wide range of powers to deal with a breach of planning control. The implementation of these powers is known as planning enforcement. Planning enforcement is an important element of the overall planning regime. The delivery of an effective, consistent and efficient enforcement service can have a great positive impact on the lives and livelihoods of the people of Southwark.
11. A breach of planning control occurs when an organisation or individual:
 - carries out development that needs planning permission without first obtaining it, or
 - breaches the conditions attached to planning permission.
12. The scrutiny report states that the individual recommendations suggested in the review are small in scale. However when taken together it is the view of the scrutiny sub-committee that they would have a substantial impact on the effective delivery of the service by:
 - setting a clear framework for joined-up working with other regulatory regimes
 - improving clarity of roles
 - establishing clear priorities for use of resources
 - providing better information and guidance for users of the planning service.
13. The following is an extract from the scrutiny report.

6. Schemes of delegation

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| 6.1 The sub-committee considered the scheme of delegation on planning enforcement currently in operation, and whether this is appropriate for the efficient operation of the enforcement service. |
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- 6.2 The current arrangement is a simple approach with the delegation of all planning enforcement matters to the head of development management.
- 6.3 Benchmarking evidence was considered on the delegation schemes in some other local authorities.
- 6.4 The benchmarking exercise demonstrated that overall there is a trend towards maximising delegation, but with some variation of approach, and referral to elected members where there is uncertainty over:
- Whether something falls within existing agreed policies and plans (departure from the development plan)
 - If there is a judgement to be made about expediency
 - If a decision is likely to be controversial
 - If an elected member “calls in” an enforcement action/lack of action.
- 6.5 The sub-committee discussed the merits of the various approaches vis a vis the simple 100% delegation approach.
- 6.6 Overall, because of the technical and legal nature of decisions to be taken, and the need for rapid action, the current scheme of delegation was considered to be appropriate for operational issues in the majority of cases. However, while the 100% delegation approach has the advantage of simplicity, there are sound democratic arguments for there to be at least some scope for decision-making by members.
- 6.7 It was agreed that on enforcement matters which are not straightforward it would be useful for the head of development management to be able to refer matters upwards as appropriate. We did not feel it appropriate to be prescriptive about the categories of case that might be referred for member decision. We felt the simplest approach would be to amend the Constitution to give the Head of Development Management a broad discretion to relinquish a decision to members. However, we anticipated that in practice, the sort of cases likely to be considered appropriate for member decision would be in particular:
- where officers propose not to take enforcement action on a controversial issue
 - on matters of strategic importance
 - on matters which, though minor individually, have a considerable cumulative effect
 - where a decision could set a precedent establishing or varying priorities for enforcement action.
- 6.8 We recognised that these would invariably be “after the event” cases in which the issue is whether or not to issue an enforcement notice or possibly a breach of condition notice; or to take self-help steps to give effect to an enforcement notice (eg. demolishing a building where the developer has failed to comply with a requirement to do so). Members would not have a role in taking decisions about pre-emptive measures such as temporary stop notices, because there the speed of decision making is crucial. There was consideration of the role of different bodies in the council’s decision making structure, including community councils which currently have a role to play in the context of planning applications. In the case of enforcement, the sub-

committee feel that the most appropriate place of referral for planning enforcement decisions would be the Planning Committee. This would avoid inconsistency of approach, and would reflect the fact that decisions relinquished to members are likely to include cases that are either of strategic importance or locally controversial. However, we emphasise that community councils should nevertheless receive regular reports about enforcement in their area: see below.

- 6.9 The sub-committee's provisional view is that this change could be achieved by a simple amendment to Part 3F of the Constitution by adding a new matter to the ten already reserved for decision by the Planning Committee along the following lines:

“In cases referred to them by the appropriate chief officer, head of service or head of business unit, to consider and determine the taking of enforcement steps.”

Planning Committee

14. The scrutiny sub-committee recommended an amendment to the constitution as set out in paragraph 6.9 of the scrutiny report. In order to put this into effect in the constitution, officers are proposing the addition of a new clause in the matters reserved for decision to the planning committee as follows:

Insert in Part 3F, Matters Reserved for Decision, a new clause 11:

“To consider planning enforcement cases where the appropriate chief officer decides that the matter is of a strategic or controversial nature and should be referred to the committee to consider and determine the taking of enforcement steps.”

Footnote to new clause 11:

“The appropriate chief officer has a broad discretion to refer matters to the committee. In practice, the sort of cases likely to be considered appropriate for member decision would be in particular:

- where officers propose not to take enforcement action on a controversial issue
- on matters of strategic importance
- on matters which, though minor individually, have a considerable cumulative effect
- where a decision could set a precedent establishing or varying priorities for enforcement action.

Operational or routine enforcement issues will not be referred to the committee.”

15. This proposed wording gives clarity on the scope of the delegation in line with the wishes of the scrutiny sub-committee and cabinet. The footnote reflects the view of the scrutiny report on the respective roles of the relevant officer and the committee. The authority to make referrals will be exercised by the relevant officer, who is likely to be the head of development management, and this will be recorded in the departmental scheme of management.

Community Councils

16. Community councils do not currently have any delegated powers to deal with planning enforcement issues. Therefore the quarterly reports would be for information purposes only.
17. Members are advised that the proposal for community councils to receive a report on a matter, which is not for decision, would fall within the general role and functions of community councils to be a focal point for discussion and consultation on matters that affect their respective local area, as set out in Part 3H, paragraph 4.
18. Officers would therefore recommend the inclusion of an additional clause on planning enforcement at Part 3H: Community Councils of the Southwark Constitution, expressly setting out this role and function.
19. In order to put this into effect in the constitution, officers are proposing the addition of a new clause as follows:

Part 3H: Community Councils – Matters Reserved for Decision

Insert new clause 7 in section entitled Planning functions (non-executive function) Consultative/non decision making

7. To receive regular information reports (at least quarterly) on local planning enforcement issues.

Renumber subsequent clauses

20. Members will note that this amendment would reflect the scrutiny sub-committee's wishes for greater clarity of the role of community councils in respect of enforcement issues and improved communication between the council and the community to be achieved, in addition to increasing the reporting on planning enforcement issues.

Community impact statement

21. These measures would formalise and improve the reporting on local planning enforcement issues to local communities.

Consultation

22. The planning committee on 7 September 2010 noted the proposals and discussed a number of issues. Members had some concerns about the potential increase in the workload of the committee and possible time delays in the taking of enforcement action. Officers explained that officers do have discretion in determining the matters to be reported to the committee and would use this discretion to ensure enforcement operations were not impeded. Members questioned whether reporting to the community councils might create different expectations in different areas when implementing enforcement. In response, officers stated that the constitutional changes provided for certain decisions to come to the planning committee, whilst community councils would receive information reports in order to avoid this situation. The meeting of chairs / vice-chairs of the community councils had noted the proposals.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

23. The purpose of this report is to consider the Cabinet resolution of 15 June 2010 to implement constitutional amendments to Part 3F: Planning Committee and Part 3H: Community Councils of the Southwark Constitution to improve the reporting of enforcement matters.
24. In terms of the proposal for the planning committee, members will note from the report that this amendment is required to provide the relevant officer with the requisite discretion to refer planning enforcement decisions to the Planning Committee for consideration, where deemed appropriate as set out in paragraph 12 above.
25. Members will note, from this report that the amendment proposed would result in the form of words set out in paragraph 13, in Part 3F: Planning Committee under the heading 'Matters Reserved for Decision.'
26. Decisions as to the taking of enforcement action are delegated to the strategic director of regeneration and neighbourhoods under Part 3P of the Southwark Constitution and there is no intention to amend this arrangement under the proposed change.
27. In respect of community councils, a member of a community council who is also a member of the planning committee would need to consider declaring a personal interest when the quarterly report is presented should he or she have sat on the planning committee which considered any of the matters covered in the report.
28. Members are advised that the role of agreeing and amending the terms of reference of committees and community councils is a matter that has specifically been reserved to council assembly under Part 3A, subject to prior consideration of any constitutional change by the constitutional steering panel (see Article 1.5 (b)).

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Scrutiny Sub-Committee C - Planning Enforcement Review	Scrutiny Team, 160 Tooley Street London SE1 2TZ	Peter Roberts 020 7525 4350
Cabinet 15 June 2010 - Planning Enforcement Review	Constitutional Team, 160 Tooley Street London SE1 2TZ	Everton Roberts 020 7525 7221
Constitutional Steering Panel - 4 October 2010	Constitutional Team, 160 Tooley Street London SE1 2TZ	Lesley John 020 7525 7228

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Communities, Law & Governance	
Report Author	Ian Millichap, Constitutional Manager Lesley John, Constitutional Officer	
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Consultation with other officers / directorates / Cabinet member		
Officer Title	Comments Sought	Comments Included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	No	No
Head of Development Management	Yes	Incorporated in report
Cabinet Member	No	No
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