

Planning enforcement scrutiny project: Note on delegation

Councillor Gordon Nardell - March 2010

1. This note briefly summarises some research on other authorities' delegation schemes.

London Boroughs included in officers' benchmarking paper (Supplemental Agenda pp. 23-24) where delegation to officers is indicated as being less than 100%

Lewisham: Constitution is at

<http://www.lewisham.gov.uk/NR/rdonlyres/4F38C7BD-CCE4-47B4-B913-EC4EA939EB54/0/ConstitutionamendedDecember2009.pdf>

2. Article 9: the terms of reference for Planning Committees A, B and C and Strategic Planning Committee include **"issuing enforcement notices, stop notices and listed building enforcement notices"** and **"carrying out any other regulatory enforcement functions contained with town and country planning or building control legislation in force from time to time"**.
3. Appendix 3 (protocol on planning and lobbying) para. 2 says: **"Elected members set the Council's planning policy and determine planning applications and enforcement issues within the context of that policy."**
4. The Schedule of Delegation at p. 330 gives the Executive Director for Regeneration **"Authority to deal with all town and country planning, development control, high hedges and highway and road traffic functions under all existing and future relevant legislation, and as amended from time to time, including (without limitation) the Acts set out in the Schedule below, save for those local choice functions reserved to the Executive and those matters reserved to the planning committees A, B or C or the strategic planning committee."** The list of examples of delegated powers includes **"Issuing planning contravention notices, breach of condition notices, enforcement notices, stop notices, temporary stop notices, untidy land notices and other similar notices and questionnaires."**
5. But that is subject to a proviso that reads **"Nothing in this Schedule of Delegation prevents any Planning Committee or the Strategic Planning Committee exercising any function within their terms of reference."** And the list at p. 333 of "Matters reserved" to the Committees includes (among other things) **"3. the application is for development which is not in accordance with the approved development plan documents or other approved planning policies, or 4. in the opinion of the Council's Head of Planning the matter would be more appropriately dealt with by the relevant committee."**
6. So the position set out in the table prepared by officers presumably reflects agreed practice as to which delegated powers officers generally exercise and which are considered **"more appropriately dealt with by the relevant committee"**.

Bromley - Constitution is at

<http://www.bromley.gov.uk/NR/rdonlyres/F4746750-EEB3-4EA0-BEA6-951630239A90/0/LBBromleyConstitutionMay2009.pdf>

Scheme of Delegation is at

<http://sharepoint.bromley.gov.uk/Public%20Docs/Delegation%20to%20Officers%20080506.doc>

7. The Chief Planner has delegated power to issue enforcement notices, stop notices and various other notices. Exercise of power to issue enforcement, stop and completion notices must be **“reported to the next available meeting of the Plans Sub-Committee or Development Control Committee.”** Also to issue planning contravention notices and BCNs subject to the agreement of the Director of Legal & Democratic Services, **“the service of the notices... being reported to the next available meeting of the Plans Sub-Committee or Development Control Committee.”**

Other urban local authorities where delegation of enforcement functions to officers is partial

Newport (Unitary): see “Planning Protocol --- Operation of the Scheme of Delegation

http://www.newport.gov.uk/stellent/groups/public/documents/policies_and_procedures/cont240380.pdf

8. Para . 1: **“Authority to determine certain applications and to take enforcement action under the Town and Country Planning Acts and related legislation has been delegated to the Head of Planning, Regeneration & Strategic Housing. Applications and enforcement action falling within the powers delegated to the Head of Planning, Regeneration & Strategic Housing will be determined by that Officer without further reference to the Council unless a request is made for the matter to be referred to Planning Committee for determination in accordance with this protocol.”**
9. Para. 3: **“A Ward Member may request that a proposal to issue an Enforcement Notice within their Ward is referred to the Planning Committee. In accordance with the Scheme of Delegation, this relates only to a proposal to issue an Enforcement Notice where a retrospective application to seek to regularise the development in question has not been submitted. Such requests must be supported by clear planning reasons why the case requires wider consideration by the Planning Committee. The scheme of delegation shall operate in the following way to allow elected Members to make an informed decision on which items are referred to Planning Committee:**
 - Ward Members will be sent by email a report summarising the breach of planning control in question and the proposed course of action (i.e. to issue an Enforcement Notice) at least 48 hours before the Notice is authorised;**
 - The Ward Member would then be required to indicate within 48 hours whether or not he/she would like the item to be considered by the Planning Committee. This request should be communicated to both the**

Development Control Manager and the Principal Planning Officer (Appeals & Enforcement)."

LB Richmond upon Thames: see the recommendations in the report to Cabinet at

[http://cabinet.richmond.gov.uk/Published/C00000224/M00001600/AI00011966/\\$REVIEWOFSHEMEOFDELEGATION.doc.pdf](http://cabinet.richmond.gov.uk/Published/C00000224/M00001600/AI00011966/$REVIEWOFSHEMEOFDELEGATION.doc.pdf)

10. **Changes to Delegation Agreement for Enforcement**

3.10 The enforcement functions delegated to the Head of Development and Enforcement currently include enforcement action in respect of non-compliance with conditions and minor works, such as satellite dishes, aerials, vehicular crossovers, extraction equipment, balconies, sheds and small buildings, plant or installation. However, many of the cases being referred to Planning Committee also comprise householder development and change of use planning applications or enforcement cases. It is suggested that authority also be delegated to the Head of Development and Enforcement or Development Control Manager to take decisions on enforcement action in respect of all householder development and change of uses, provided these are clearly contrary to any relevant SPG and/or policies.

3.11 Currently the Scheme of Delegation allows for certain officers to decide not to proceed with enforcement action in respect of unauthorised development covered by Supplementary Planning Guidance, which is clearly in accordance with that guidance and relevant planning policies. However, since some unauthorised development may not be covered by guidance, but clearly complies with relevant planning policy, it is suggested that the Scheme is changed to reflect this point.

3.12 Since the recent introduction of Temporary Stop Notices several have been served and require the agreement of the Chair or Vice Chair of the Planning Committee. It is suggested that there is a change to delegated arrangements to allow the Head of Development and Enforcement or Development Control Manager to serve these without this prior agreement. However, there would be no change to requiring the agreement of the Chair or Vice Chair for Stop Notices or an injunction."

Dudley MBC: see the report on proposed delegation arrangements at

<http://cmis.dudley.gov.uk/CMISWebPublic/Binary.ashx?Document=7823>

11. The recommendation was for all remaining non-delegated enforcement functions to be delegated to officers but with discretion to refer to Committee.
12. Para. 13: **"It is suggested therefore that the increase in delegated powers to officers at this Council would bring us into line with the majority of our neighbouring authorities. This does not prevent officers bringing matters which are considered particularly sensitive or controversial to the Development Control Committee for authorisation."**