

## **1.2 SCHEME OF OFFICER DELEGATION**

- 1.2.1 The Council delegates to the Chief Executive, Deputy Chief Executive, Service Leads, Section 151 Officer, Head of Human Resources and, Council Solicitor and any officer acting in her/his place in accordance with paragraph 1.2.6 below the authority to:
- (a) Implement decisions of the Council, the Council's committees and sub-committees in the discharge of the Council's functions within their area of responsibility, including policy, strategy, executive, regulatory and operational decisions.
  - (b) Take all routine decisions including those of a professional, managerial, operational or regulatory nature in relation to the discharge of the Council's functions within their area of responsibility. Delegated powers shall include the carrying out of all duties and powers covered by the function including administrative and procedural acts, the exercising of discretion and the making of determinations.
  - (c) Take decisions in relation to the discharge of the Council's functions within their area of responsibility after consultation with the Leader of Council or Chairman of the appropriate committee or sub-committee.
  - (d) In relation to matters not falling within paragraphs (a) to (c) above, submit a report and make recommendations as appropriate to the Council, the committee or sub-committee.
  - (e) Take decisions in relation to the discharge of any of the Council's functions in cases of emergency.
- 1.2.2 The officer shall always be entitled to refer a matter to the Council or appropriate committee or sub-committee for decision where s/he considers it expedient to do so.
- 1.2.3 The officer may authorise an officer(s) to exercise, on her/his behalf, functions delegated to her/him. Any decision taken under this authority shall remain the responsibility of the relevant officer named in paragraph 1.2.1 above and must be taken in the name of that officer who shall remain accountable and responsible for such decisions.
- 1.2.4 In discharging delegated functions officers shall;
- (a) Comply with all relevant legislation.
  - (b) Comply with the Constitution of the Council and relevant guidance.
  - (c) Having regard to value for money principles and use the most efficient and effective means available, including the deployment of staff and other resources under their control and the procurement of other resources as may be necessary whether within or outside the Council.
  - (d) Act in accordance with the policies, strategies and objectives of the Council.
  - (e) Have regard to the corporate interests of the Council.

- 1.2.5 Officers discharging functions, other than those which relate to her/his area of responsibility, under paragraph 1.2.1 (e) above must report any action taken to the appropriate Committee.
- 1.2.6 Where an officer referred to in paragraph 1.2.1 above is to be absent for any period, s/he or the Chief Executive or Deputy Chief Executive, as appropriate, must nominate in writing another officer to act in her/his place during their absence.

### **Appointment of Proper Officers**

- 1.2.7 An officer referred to paragraph 1.2.1 above is the proper officer for all purposes relating to her/his area of responsibility.
- 1.2.8 The Chief Executive or Deputy Chief Executive shall, where necessary, appoint proper officers for the discharge of the Council's functions where an appointment is required by any legislation.

### **Statutory and Proper Officers**

<b>Officer</b>	<b>Function(s)</b>
Chief Executive	(i) Part III of the Local Government Act 1972 (ii) Representation of the People Act 1983 (iii) Parish and Community Meetings (Polls) rules 1983 (iv) Part V of the Local Government Act 1972
Council Solicitor	(i) Parts I, VII (excluding Sections 115 and 146), IX, XI, XII, Schedule 14, 16 and Schedule 29 of the Local Government Act 1972 (ii) Section 5 (Monitoring Officer) and 19 of the Local Government and Housing Act 1989 (iii) Section 41 of the Local Government (Miscellaneous Provisions) Act 1976 (iv) Local Authorities (Standing Orders) (England) Regulations 2001
Section 151 Officer	(i) Section 115 and Part VIII (including Section 151) of the Local Government Act 1972

Specialist Services Lead	<ul style="list-style-type: none"> <li>(i) Sections 80 and 84 of the Environmental Protection Act 1990</li> <li>(ii) Section 78 of the Building Act 1984</li> <li>(iii) Public Health (Control of Disease) Act 1984</li> <li>(iv) Public Health Act 1936</li> <li>(v) Environmental Protection Act 1990</li> <li>(vi) The Housing Acts 1985, 1988 and 1996</li> </ul>
Chief Executive, Section 151 Officer and Council Solicitor	All other proper officer functions within their area of responsibility, including Part VA of the Local Government Act 1972 in respect of reports prepared by officers within their areas.

1.2.9 Without prejudice to the generality of the foregoing scheme of officer delegation the functions of Officers shall include (as appropriate to their areas of responsibility) power within the approved establishment to recruit, manage and, where necessary, dismiss staff under their control and in particular:-

- to authorise pay and conditions (including honoraria);
- to undertake disciplinary proceedings;
- to defend and, if necessary (and subject to the approval of the Section 151 Officer or his nominee if it involves claiming on the Council's insurance) settle any claims made against the Council;
- to be responsible for the health and safety at work of staff;
- to implement all employment policies, practices and procedures;
- to operate the Council's Grievance Procedures.

### **1.3 OFFICER SCHEME OF DELEGATION PROTOCOLS:**

Under the Council's Scheme of Delegation most operational and administrative matters are delegated to the Chief Executive, Deputy Chief Executive, Section 151 Officer, Council Solicitor, Services Leads and Head of Human Resources. These Protocols set out how the Chief Executive, Deputy Chief Executive, Section 151 Officer, Council Solicitor, Services Leads and Head of Human Resources propose to exercise these powers with a view to ensuring that Members still have adequate opportunity to comment on and be involved in the decision making process as appropriate.

#### **(i) POLICY AND RESOURCES COMMITTEE PROTOCOL**

Matters to be presented to the Policy and Resources Committee:-

1. Any decisions that fall outside the scheme of delegation for officers for all functions within the responsibility of the Policy and Resources Committee - for example where an approval is needed for expenditure above officer spending limits - shall be presented as Part A reports for determination by the Committee.
2. Any function delegated to an Officer which in the opinion of the Officer should be determined by the Policy and Resources Committee shall be presented as Part A reports for determination by the Committee.
3. Any significant changes to or departures from existing policy, or any new policy issues, for functions within the responsibility of the Policy and Resources Committee shall be presented as Part B reports for a Committee recommendation to Council.
4. Any significant changes to or departures from the existing budget for functions within the responsibility of the Policy and Resources Committee shall be presented as Part B reports for a Committee recommendation to Council.

#### **(ii) COUNCIL PROTOCOL**

Where in the opinion of the Chief Executive, Deputy Chief Executive, Section 151 Officer or Council Solicitor timing is of the essence, matters may be reported direct to Council.

#### **(iii) PLANNING COMMITTEE PROTOCOL**

This Planning Protocol is intended to provide a guide to the exercise by the Specialist Services Lead of delegated powers in relation to the Planning and Listed Building functions.

This Protocol comprises two elements showing the division of responsibility between the Planning Committee and the Specialist Services Lead:

- (i) a Process Map; and
- (ii) text intended to provide a plain English guide to terminology.

This Protocol should be read in conjunction with the delegation scheme for the Specialist Services Lead.

## Planning Applications Process Map

Committee Decisions	Delegated decisions
Major Development Applications	Major Development Applications
<ul style="list-style-type: none"> <li>All major category applications eg more than 9 dwellings, more than a hectare, commercial applications more than 1000m<sup>2</sup></li> </ul>	<ul style="list-style-type: none"> <li>The refusal of major applications on the grounds of inadequate or incomplete information.</li> <li>The refusal of major applications which are repeat applications of the same or similar proposals which have previously been refused by the Local Planning Authority within the preceding 12 months.</li> </ul> <p style="text-align: center;">BVPI target 60% in 13 weeks 10-12 applications per year in Ryedale about 1% of total applications</p>
Minor/Other Applications	Minor/Other applications
<ul style="list-style-type: none"> <li>Approvals where more than one objection with reasons raising <b>material planning considerations</b> is received. <b>(1)</b></li> <li>Approval recommendations which would be contrary to policies in the Local Plan.</li> <li>All applications where a <b>clear and convincing request (2)</b> for referral to Committee based on material planning considerations is received from a <b>Council Member (3)</b></li> <li>All applications submitted by Members of the Council; Members of staff or other close relative. The Councils own applications.</li> <li>Refusal recommendations where there is a <b>clear conflict of opinion (4)</b> with parish/town council or third parties in relation to <b>material planning considerations</b>.</li> </ul>	<ul style="list-style-type: none"> <li>All approvals where there are no objections to the proposal</li> <li>All approvals where <b>non material planning objections (5)</b> have been received</li> <li>All approvals where plan revisions and or appropriate conditions are <b>judged (6)</b> to address third party objections.</li> <li>Approvals where parish/town council and/or single third party objections with reasons are received but where there are no <b>public interest issues (7)</b> involved.</li> <li>All refusals where there is no <b>explicit support (8)</b> for the proposal from parish/town councils and or third parties.</li> <li>All refusals where the decision is based on <b>inadequate information/quality of information (9)</b>.</li> </ul>

## **Explanatory Notes to the Planning Protocol**

### **1. Material planning consideration – Point 4.3/4 Planning Code of conduct –**

Section 70 of the Town and Country Planning Act 1990, provides that Members have a statutory duty when determining planning applications, to have regard to the provisions of the development plan where material to the application, and to any other material consideration. The starting point for decisions on planning applications is the development plan. Section 38(6) Planning & Compulsory Purchase Act 2004 says that planning decisions must be made in accordance with the development plan, unless material considerations indicate otherwise. The development plan consists of:

- The Ryedale Local Plan (2002)

For the purposes of Section 119 and Schedule 8 of the Planning & Compulsory Purchase Act 2004, the transitional arrangements are that the following plans:

Ryedale Local Plan (Adopted 2002) incorporating Selective Alteration No1 (Adopted 2004)

have effect for a transitional period as from 28 September 2004.

Other material planning considerations include:

- Government guidance contained, for example, in Planning Policy Guidance notes, Planning Policy Statements (PPGs/PPS), Regional Planning Guidance, Circulars and Ministerial announcements;
- planning briefs, planning policy statements and other 'supplementary planning guidance' approved by the Council following public consultation;
- statutory duties in relation to conservation areas and listed buildings;
- representations made by statutory consultees and other people making comments, to the extent that they relate to planning matters;
- the environmental qualities of the surrounding area or the visual character of a street (this includes the scale, design and materials of buildings and the landscaping of a site);
- the amenity and privacy of dwellings;
- the character of an area in other senses (in terms of noise or other forms of pollution);
- road safety (both directly as in the case of a dangerous access or indirectly in terms of car parking and traffic generation);
- public services, such as drainage;
- public proposals for using the same land; and
- legitimate planning gain/community benefit.

**2. Clear and convincing request –** A written request in writing to the Specialist Services Lead within 21 days of the date of issue of the weekly application list.

### **3. Council Member - This point applies to any District Council Member**

**4. Clear conflict of opinion –** ie where parish or town councils consultees, members of the public, elected Members or other organisations recommend support or approval with reasons.

**5. Non material planning objections –** see Planning Code of Conduct point 4.5. The objections with reasons should be made in writing to the Specialist Services Lead.

There is much case law on what are, and are not material planning matters. **Planning matters must relate to the use and development of land.** For example, the following are **not** normally planning matters and **cannot be taken into account in planning decisions**:

- personal and financial considerations;
- private property rights and boundary disputes;
- covenants;
- effects on property and land values;
- developers' motives;
- public support or opposition, unless it is founded on valid planning matters;
- the fact that development has already begun (people can carry out development at their own risk before getting permission and the Council has to judge development on its planning merits);
- the fact that an applicant has carried out unauthorised development in the past;
- "trade objections" from potential competitors;
- moral objections such as activities likely to become addictive, for instance betting shops, lottery kiosks or amusement arcades;
- the belief that an application is submitted by an owner with the intention of selling the property at an enhanced value;
- the loss of an attractive private view (for instance when development is proposed on the opposite side of the road to or at the rear of an objector's house);
- the fear that an objector's house or property might be devalued;
- the fact that the applicant does not own the land to which his application relates (this can be overcome by agreement with the owner and, if it is not, the development cannot happen);
- the fact that an objector is a tenant of land where development is proposed; any consequences between landlord and tenant are unrelated to the application;
- allegations that a proposal might affect private rights, eg restrictive covenants; property maintenance; ownership and private rights of way disputes; boundary disputes; (such considerations are legal matters on which objectors should consult their own solicitor or advisor since it will not be possible for Officers of the Council to advise as to such rights);
- arguments of a personal kind in relation to the circumstances of the applicant. It is essential that Members are aware that planning permission goes with the land. The Government inquiry into planning in North Cornwall ('Inquiry into the Planning System in North Cornwall - DoE 1993') makes it plain that personal preferences are not reasons for granting planning permissions. Personal circumstances may, very exceptionally, have a place in the system. Therefore, information about the applicant should not be material to the consideration of a planning application in the vast majority of cases, and personal circumstances cannot therefore, in general, outweigh planning considerations.

**6. Judged** – the case officer in consultation with the Specialist Services Lead will judge whether the revisions or conditions address the third party objections.

**7. Public interest issues** – Development Control is about controlling development in the public interest ie a householder extension at the rear of the property, not perceived outside the site is an example of an application of limited impact with little or no public interest. Whereas an application for new dwellings in a prominent site readily visible from an adjacent footpath would have considerable public interest issues.

**8. Explicitly support** – A "No comments", "No Objection", support/approval with no reasons raising **material planning considerations** are responses which are not considered to be explicit support for an application.

**9. Inadequate information/quality of information** – The Case officer in consultation with the Head of Planning will assess the adequacy of the information. An example would be poor quality of plans or inaccurate plans.

**10. Conflict with local plan** – ie the erection of a new dwelling in the countryside outside a development area or failure to satisfy all the criteria of a Policy in the Local Plan.

**11. Major development** – is defined by Article 8 (7) of the Town and Country Planning (General Development Procedure Order) 1995 as development involving:

- (a) the provision of dwellinghouses where -
  - (i) the number of dwellinghouses to be provided is 10 or more; or
  - (ii) the development is to be carried out on a site having an area of 0.5 hectare or more and it is not known whether the development falls within paragraph (a) (i);
- (b) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (c) development carried out on a site having an area of 1 hectare or more.