

## MUNICIPAL YEAR 2017/2018 DRAFT REPORT NO.

### MEETING TITLE AND DATE:

#### PLANNING COMMITTEE

17 October 2017

#### REPORT OF:

Assistant Director –  
Regeneration & Planning

**Agenda – Part: 1**

**Subject:**  
**Scheme of Delegation for Planning**  
**Applications and Planning Enforcement**

**Wards: All Wards**

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### 1. EXECUTIVE SUMMARY

- 1.1 This report updates the Scheme of Delegation to deal with planning applications and planning enforcement.

### 2. RECOMMENDATIONS

- 2.1 That the Planning Committee agrees to the revised scheme of delegation.

### 3. BACKGROUND

- 3.1 On 17 December 2013, the Planning Committee agreed a Scheme of Delegation for Planning, Highways and Transportation.
- 3.2 This report sets out changes to the scheme of delegation, arising from changes in legislation and alterations to the structure of Development Management within the Regeneration and Planning Division.
- 3.3 In particular, changes are required to reflect new provisions within the Town and Country Planning (General Permitted Development) (England) Order 2015 which that mean that planning permission may no longer be required for some changes of use of buildings and certain building works, subject to a prior approval procedure having first been undertaken. These prior approval procedures limit the issues that can be considered and provide a fixed period of time in which the Council has to determine the application. If the Council

does not determine the application within the specified period, the application is deemed approved. The amended delegation amendments are in Appendix 1.

#### **4 S106 Authorisation**

- 4.1 The proposed scheme of delegation also seeks to clarify the authorisation to spend Section 106 (S106) and Community Infrastructure Levy (CIL) monies arising from developments approved by Planning Committee. It recommends a scheme of delegation aligned to the process set out for Neptune; the Council's purchasing order system.
- 4.2 S106s are legally binding agreements entered into between the Council and a developer to lessen the negative impacts of development. An agreement is intended to make a development 'acceptable' in planning terms which would otherwise be deemed as unacceptable and can include for example, affordable housing and other site-specific mitigation measures. Monies received by the Council must be spent in accordance with the terms set out in the legal agreement.
- 4.3 For CIL, monies received by the Council can be pooled and spent on infrastructure identified on the CIL Regulation 123 List. CIL is therefore not bound by legal agreement but a scheme of delegation is required to authorise spend on projects identified on the Council's Regulation 123 List (which was approved by Local Plan Cabinet Sub Committee on 23 March 2016).
- 4.4 Departments do not include S106 within their future budgetary processes due to uncertainties relating to a development taking place, or the S106 agreement being varied. Corporately, money is received and subsequently allocated according to an authorisation to spend.
- 4.5 The Council's constitution (section 3.4) sets out the scheme of delegation for decision making processes across the Council. For operational matters Directors are identified as responsible. The constitution states that, *"Some of these decisions will be administrative in their nature and will be delegated within the group in accordance with a written scheme"*.
- 4.6 A written scheme of delegation is therefore required for the purposes of transparency and consistency, and to ensure that spend of funds is proceeding with the proper authority.

#### The Council's Constitution

- 4.7 The following scheme is referred to in the Council's constitution; Section 4 (g) applies to revenue expenditure:

*"The reallocation or redirection of existing resources within the revenue budget is subject to the Council's virement approval procedure..."*

#### *Within Departmental Budgets*

*Up to £100,000*

*Approval by Director*

<i>£100,001 to £500,000</i>	<i>Approval by Cabinet Lead Member</i>
<i>Above £500,000</i>	<i>Approval by Cabinet</i>

*Between Departmental Budgets*

<i>Up to £100,000</i>	<i>Approval by the two or more Directors involved</i>
<i>£100,001 to £500,000</i>	<i>Approval by Cabinet Lead Members and Directors</i>
<i>Above £500,000</i>	<i>Approval by Cabinet”</i>

- 4.8 For capital expenditure the following scheme applies as set out in section 5 (j) of the Council’s constitution:

*“The reallocation or redirection of existing resources within the capital programme is subject to the Council’s virement procedures.*

*Within Departmental Capital Allocations*

<i>Up to £100,000</i>	<i>Approval by Director and Director of Finance, Resources and Customer Services</i>
<i>£100,001 to £500,000</i>	<i>Approval by Cabinet Lead Member</i>
<i>Above £500,000</i>	<i>Approval by Cabinet</i>

*Between Departmental Capital Allocations*

<i>Up to £100,000</i>	<i>Approval by the two or more Directors involved and the Director of Finance, Resources and Customer Services</i>
<i>£100,001 to £500,000</i>	<i>Approval by Cabinet Lead Members</i>
<i>Above £500,000</i>	<i>Approval by Cabinet”</i>

Proposed Scheme of Delegation for Spend of S106 and CIL Monies

- 4.9 The Council’s constitution sets out the approval limits at Director level and above and these appear to have been set some time ago. On receipt of S106 monies a department will seek authorisation to spend the funds in accordance with the terms set out in the legal agreement. Significant funds are authorised to be spent by departments each year.
- 4.10 After the expenditure has been authorised, the protocol is for the Head of Service of Strategic Planning and Design to validate the reimbursement (draw down) of funds by departments; for example in 2016/17 the Council spent approximately £4.1M of S106 receipts in accordance with the terms set out in the S106 agreement (and approximately £165K in CIL).
- 4.11 Due to the sums involved, a written scheme of delegation is required to authorise spend at Director level and below. Neptune is the Council’s corporate purchasing order system. The system has a scheme of delegation which has yet to be approved but is in operation; this is available on Enfield Eye (version dated 4 September 2017). The Neptune scheme significantly raises the approvals thresholds set out in the Council’s constitution and these are detailed in table 1 below.
- 4.12 Delay in obtaining authorisation at a senior (Director) level could significantly delay the authorisation to spend on infrastructure and put at risk the timely

application of the funding available. It is therefore proposed that the S106 & CIL Scheme of Delegation aligns with the Neptune system for consistency at a corporate level and also due to the significant amounts of monies authorised to be spent by departments each year. Member approval is therefore sought to ratify the scheme of delegation proposed in table 1.

<b>Table 1: Proposed S106 &amp; CIL Scheme of Delegation Based On Neptune Approval Limits</b>	
<b>Spend/Approval Limit</b>	<b>Required Level of Sign Off</b>
£3,000,000	Director
£250,000	AD
£100,000	HOS

## **5. ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 No other options are considered appropriate. To avoid legal challenge, the Council needs to have an up to date scheme of delegation.

## **6. REASONS FOR RECOMMENDATIONS**

- 5.1 This is an ongoing process to ensure that the Council has effectively and legally delegated its statutory powers to officers.

## **7. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS**

### **7.1 Financial Implications**

- 7.1.1 There are no specific financial implications arising from these recommendations

### **7.2 Legal Implications**

- 7.2.1 Under Section 101 of the Local Government Act 1972, Local Authorities have a general power to discharge their functions through officers.

- 7.2.2 Paragraph 11.3 of the Constitution of the Council authorises the Borough Solicitor to institute, defend or participate in any legal proceedings. The delegation of authority sought in this respect will continue the existing arrangement to provide parallel authority to that vested in the Borough Solicitor.

- 7.2.3 The current arrangements within the legal department are adequate to ensure that there is compliance with the Constitution arrangements of the Council and the legal requirements needed to discharge their functions through officers for prosecutions work in the Council.

### **7.3 Property Implications**

N/A

## **8 KEY RISKS**

- 8.1 The Council is at risk of legal challenge to any of its decision making where staff operate with powers that have not been properly delegated.

## **9. IMPACT ON COUNCIL PRIORITIES**

### **9.1 Fairness for All**

The recommendations in this report will help to ensure that the Council has a defined and transparent scheme of delegation to ensure effective decision making and that the Council is able to demonstrate a clear risk-based approach in responding to reports of unlawful development or use of land and property.

### **9.2 Growth and Sustainability**

The recommendations in the report fully accord with this Council priority.

### **9.3 Strong Communities**

The recommendations in the report fully accord with this Council priority.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

The delegation arrangements ensure an effective performance management framework for planning application and enforcement.

## **Background Papers**

### **Appendix 1: SCHEME OF DELEGATION PLANNING APPLICATIONS AND PLANNING ENFORCEMENT**

## **Appendix 1**

### **SCHEME OF DELEGATION** **PLANNING APPLICATIONS AND PLANNING ENFORCEMENT**

The Assistant Director - Regeneration & Planning, Head of Development Management, Planning Decisions Manager and Principal Planning Officers (Subject to limitations imposed by the Assistant Director or Head of Development Management) will determine all applications for planning permission and other development, including tree matters under the Planning Acts, the Planning and Compensation Act 2004, Section 11 of the London Local Authorities Act 1995, Sections 23 and 24 of the Local Government (Miscellaneous Provisions) Act 1976 and any statutory re-enactment or modification thereof and subordinate legislation made there-under. These are detailed in the schedule of powers below at points (a) – (q) inclusive, (nn) and (oo).

The Assistant Director – Regeneration & Planning, Head of Development Management, Manager (Pollution Control, Planning Enforcement) and Principal Planning Enforcement Officer may determine the enforcement matters, the Planning and Compensation Act 1991, Section 11 of the London Local Authorities Act 1995, Sections 23-26 of the Local Government (Miscellaneous Provisions) Act 1976 and any statutory re-enactment or modification thereof and subordinate legislation made there-under. These are detailed in the schedule of powers detailed at points (r) to (oo) inclusive.

Planning Enforcement Officers (Subject to limitations imposed by the Assistant Director- Regeneration & Planning or Head of Development Management), may determine enforcement matters detailed at points (r), (s), (gg) and (hh).

The Tree Officer (Development Management) may determine all tree and hedge matters detailed in the schedule of powers below at points (m) and (n), and may determine enforcement matters detailed at points (z), (gg) and (hh)

The Team Leader for Environmental Protection and the Principle Waste Enforcement Officer (Subject to limitations imposed by the Assistant Director- Regeneration & Planning or Head of Development Management), may determine enforcement matters detailed at points (aa) and (bb).

Subject to the following **EXCEPTIONS**:

1. Detailed applications for the erection of 10 or more residential units.
2. Outline applications for residential development with a site area of more than 0.5 hectares.
3. Detailed applications for the erection of non-residential development (excluding extensions to existing buildings), in excess of 1,000 sq. metres (gross).
4. Outline applications for the erection of non-residential development with a

site area of more than 1 hectare.

5. Applications for the mining and working of minerals or the use of land for mineral working deposits.
6. Applications which are advertised as a departure from the DMD and which are recommended for approval.

Note - Applications in categories 1 to 6 may be refused under delegated authority. Applications for industrial or warehouse development (B1, B2 and B8) where they are located in designated Strategic Industrial Locations may be determined under delegated authority, including SIL

7. Applications for development in conservation areas and for listed building consent to which the Conservation Advisory Group raise objection, but are recommended for approval.
8. Applications submitted by or on behalf of a Councillor (or their spouse/partner) or by any member of staff (or their spouse/partner) responsible to the Assistant Director (Regeneration & Planning) of this Council. Private applications made by or on behalf of a Director, the Assistant Director (Regeneration & Planning) and the Chief Executive of this Council and their respective spouses/partners; or other members of staff who regularly attend Planning Committee.
9. Applications that have been considered by a Panel of the Planning Committee.
10. Applications which any Councillor requests in writing to the Assistant Director (Regeneration & Planning) within 21 days of the circulation of details of the application should be determined by Committee, subject to agreement of the Chairman.
11. Any other application or issue which, by reason of its scale, impact upon the environment, or the level of public or likely Councillor interest, should, in the opinion of the Assistant Director (Regeneration & Planning), be determined by the Committee.

### **Background Papers:**

### **Appendix 1**

## **APPENDIX 1 - SCHEDULE OF POWERS TO BE DELEGATED**

This list includes those planning powers most often exercised by this Council

<b><u>Category</u></b>		<b><u>Relevant Legislation</u></b>
Planning Applications: -		
(a)	Planning Permission.	S57 - 63; S.70; S.299; of Town & Country Planning Act 1990.  Town & Country Planning (General Development Procedure) Order 1995.  Planning & Compensation Act 2004  Planning Act 2008
(b)	Advertisement Consent.	S220 of Town & Country Planning Act 1990.  S9 - 14 of Part III of the Town & Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended).  LBE advertisements (including roundabouts)
(c)	Listed Building Consent.	S10 - 19 of Planning (Listed Buildings & Conservation Areas) Act 1990.
(d)	Conservation Area Consent.	S74 of Planning (Listed Buildings & Conservation Areas) Act 1990.
(e)	Certificates of Lawfulness of Development (Existing and Proposed).	S191 - 192 of Town & Country Planning Act 1990.  S10 of Planning and Compensation Act 1991.
(f)	Prior Approval	
	Telecommunications	Part 16 of Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
	Temporary uses of buildings	Part 4, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
	Agriculture	Part 6 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).



Non domestic extensions, alterations etc.	Part 7, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
Demolition	Part 11 of Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended and applications for 'relevant demolition')
Renewable Energy	Part 14 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
Miscellaneous development	Part 18 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
Residential	Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
Change of use - retail, betting office or pay day loan shop or casino to restaurant or cafe	Schedule 2, Part 3 Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
Change of use – retail, betting office or pay day loan shop to assembly and leisure	Schedule 2 Part 3 Class J of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
Change of use – retail, betting office or pay day loan shop to dwellinghouse	Schedule 2 Part 3 Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
Change of use – specified sui generis use to dwellinghouse	Schedule 2 Part 3 Class N of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
Change of use – offices to dwellinghouses	Schedule 2 Part 3 Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
Changes of use – storage or distribution to dwellinghouses	Schedule 2 Part 3 Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

	Changes of use – agricultural buildings to dwellinghouses	Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
	Changes of use – agricultural buildings to flexible commercial use	Schedule 2 Part 3 Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
	Changes of use – agricultural buildings to state-funded school or registered nursery	Schedule 2 Part 3 Class S of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
	Changes of use – business, hotels etc. to state funded schools or registered nursery	Schedule 2 Part 3 Class T of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
(g)	Development by the Council. 'Other' applications where no objections are received	Regulations 3 and 4 of Town & Country Planning General Regulations 1992.
(h)	Other Authority Development.	Article 10 of Town & Country Planning (General Development Procedure) Order 1995.
(i)	Reserved Matters.	S92 - 93 of Town & Country Planning Act 1990.
(j)	Variation and discharge of Conditions.	S73 of Town & Country Planning Act 1990.
(k)	Legal agreements associated with applications determined under delegated authority including modification of extant agreements	S106 of Town & Country Planning Act 1990. S106a of the Town and Country Planning Act 1990 S278 of the Highways Act 1980
(l)	Environmental Impact screening and scoping opinions	Town and Country Planning (Environmental Impact Assessment) Regulations 1999 2011 (as amended)
(m)	Works to trees  Works to hedgerows	S198 and 211 of the Town and Country Planning Act 1990, (Tree Preservation) Regulations 2012  The Hedgerows Regulations 1997
(n)	The making of a Tree Preservation Order	S198, 199, 201, 300 of the Town and Country Planning Act 1990, (Tree

		Preservation) Regulations 2012
(o)	Non Material Amendment	S96A of the Town and Country Planning Act 1990 (as amended)
(p)	Minor Material Amendment	S73 of the Town and Country Planning Act 1990 (as amended)
(q)	Hazardous Substances Consent	S6-9, 13,14,17,18 Planning (Hazardous Substances) Act 1990 S5 The Planning (Hazardous Substances) Regulations 2015
Enforcement Action: -		
(r)	Planning Contravention Notices	S171C of the Town and Country Planning Act 1990. S1 of the Planning and Compensation Act 1991.
(s)	Request for information as to the interest in land	Section 330 of the Town and Country Planning Act 1990
(t)	Breach of Condition Notices	S187A of the Town and Country Planning Act 1990 S2 of the Planning and Compensation Act 1991.
(u)	Enforcement Notices	S.172 of the Town and Country Planning Act 1990.
(v)	Listed Building Enforcement Notices	S38 of the Planning (Listed Building and Conservation Areas) Act 1990
(w)	Conservation Area Enforcement Notices	S74 of the Planning (Listed Building and Conservation Areas) Act 1990
(x)	Special Enforcement Notices – Crown land	S94 of the Town and Country Planning Act 1990.
(y)	Completion Notices	S94 of the Town and Country Planning Act 1990.
(z)	Tree Notices Replacement Trees  Dangerous Trees  High Hedge	S207 of the Town and Country Planning Act 1990.  S23, 24 of the Local Government (Miscellaneous Provisions) Act 1976  Part 8 of the Anti-Social Behaviour Act

	Replacement Hedgerows	2003 The Hedgerows Regulations 1997
(aa)	Notices – maintenance of land and hazardous substances	S215 of the Town and Country Planning Act 1990. S24 of the Planning (Hazardous Substances) Act 1990
(bb)	Unauthorised Placards, Posters and Advertisement Hoardings	S224, 225 of the Town and Country Planning Act 1990. S10 and S11 London Local Authorities Act 1995
(cc)	Advertisement Discontinuance Notices	S224, 225 of the Town and Country Planning Act 1990.
(dd)	Stop Notices	S183 of the Town and Country Planning Act 1990.
(ee)	Temporary Stop Notices	S171E of the Town and Country Planning Act 1990.
(ff)	Injunctions	S187B and S214A of the Town and Country Planning Act 1990. S3 of the Planning and Compensation Act 1991. S94 of the Community Infrastructure Levy Regulations 2010 S44A Planning (Listed Buildings and Conservation Areas) Act 1990 S11 of the The Hedgerows Regulations 1997
(gg)	Notice of right to entry without a warrant.	S196A, S214B and S324 of the Town and Country Planning Act 1990. S88 of the Planning (Listed Building and Conservation Areas) Act 1990 SS36 and 36A of the Planning (Hazardous Substances) Act 1990 S74 of the Anti-Social Behaviour Act 2003 S109 of the Community Infrastructure Levy Regulations 2010 S12 of the Hedgerows Regulations 1997
(hh)	Right of entry under a warrant	S196B and S214C of the Town and Country Planning Act 1990.

		S88A of the Planning (Listed Building and Conservation Areas) Act 1990 S13 of the Hedgerows Regulations 1997
(ii)	Decisions not to take enforcement action	
(jj)	Prosecutions relating to failure to comply with the requirements of any enforcement action or a breach of the law that carries criminal sanctions without the need for a notice to be served.	
(kk)	Works in default action	Under the legislation referred to in this schedule, where applicable, including S178 and S219 of the Town and Country Planning Act 1990 S42 and S74 of the Planning (Listed Building and Conservation Areas) Act 1990 S77 of the Anti-Social Behaviour Act 2003 S97 of the Town and Country Planning Act 1990 S102 of the Town and Country Planning Act 1990 S209 of the Town and Country Planning Act 1990
(ll)	Powers to execute urgent works to preserve a listed building	S54 and S55 of the Planning (Listed Building and Conservation Areas) Act 1990
(mm)	CIL Stop Notices	S89 of the Community Infrastructure Levy Regulations 2010
(nn)	Revoke, Revision and Modifications of Planning Permissions	S97 of the Town and Country Planning Act 1990 S23 of the Planning (Listed Building and Conservation Areas) Act 1990
(oo)	Discontinuance of Use or Alteration of Building or Works	S102 of the Town and Country Planning Act 1990