

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 13 FEBRUARY 2024

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 43A
SCHEME OF DELEGATION TO OFFICERS – REPORT ON OUTCOME OF
MEMBER OFFICER WORKING GROUP

REPORT BY SERVICE LEADER - PLANNING & SUSTAINABLE GROWTH

1. Abstract

- 1.1 This report updates committee on the review of the council's statutory scheme of delegation for determination of planning applications under section 43A of the Town and Country Planning (Scotland) Act 1997 undertaken by the short life member officer group (MOG) and seeks approval for minor change to the existing scheme.

2. ALIGNMENT TO THE COUNCIL PLAN AND COUNCIL POLICIES

- 2.1 A proportionate scheme of delegation contributes to the provision of an effective and efficient development management service, and in turn contributes to the following outcomes in the Angus Council Plan 2023-2028:

- Caring for our economy
- Caring for our people
- Caring for our place
- Angus Council is efficient and effective

3. RECOMMENDATION(S)

- 3.1 It is recommended that committee: -

- (i) agree the proposed revision to the section 43A planning scheme of delegation as set out in Appendix 1; and
- (ii) agree to place the scheme of delegation before Angus Council for approval before submission to Scottish Ministers.

4. BACKGROUND

- 4.1 Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) requires the council to prepare a scheme of delegation by which any application for planning permission for a development within the category of local developments or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category is to be determined by a person appointed by them. It also requires the scheme to be kept under review. The scheme of delegation cannot be adopted until it has been approved by the Scottish Ministers.

- 4.2 Where an application is determined under the section 43A scheme of delegation, the applicant may challenge the decision by application to the local review body

(development management review committee). Where an application is determined by committee, or by delegation provided by the Local Government (Scotland) Act 1973, an applicant has a right to challenge the decision by means of appeal to Scottish Ministers.

- 4.3 The scheme of delegation avoids committee time being spent deciding routine or minor applications which do not give rise to major issues or matters of wider public interest. The ability to challenge decisions made through the section 43A scheme of delegation to the development management review committee increases the number of decisions taken at a local level and reduce the number of cases determined by Scottish Government appointed reporters.
- 4.4 The council's first scheme of delegation was approved by Ministers in June 2009 and came into effect from 3 August 2009. It was reviewed by a short life working group in 2014 (report 162/14) and again in 2019 (report [107/19](#)). The current scheme of delegation, which reflects the 2019 review, was approved by Scottish Ministers on 17 May 2019.
- 4.5 At its meeting on October 2023, committee agreed to establish a short life member officer group (MOG) (report [271/23](#) refers) to consider whether any changes are required to improve the efficiency and effectiveness of the scheme of delegation in determining relevant planning applications

5. DISCUSSION

- 5.1 The MOG met on 7 December 2023 and considered the existing scheme of delegation. It recognised that, in broad terms, the scheme of delegation determines which planning applications for local development will be determined by officers, and consequentially, which applications will be determined by committee. Members further recognised that the scheme of delegation has implications in terms of the route for any subsequent appeal in relation to a decision on a planning application.
- 5.2 Information presented to the MOG confirmed that, while figures will fluctuate slightly year-on-year, around 96% of applications are determined under delegated powers and a similar percentage are approved each year. The delegation and approval rates are broadly comparable with figures available for other planning authorities in Scotland.
- 5.3 The MOG noted that the existing scheme of delegation identifies six circumstances where planning applications cannot be determined by officers. Those categories relate to matters of scale of development; the nature, level, and significance of public interest; and matters of openness and transparency, reflecting circumstances where it has been decided that decision-making should be subject of enhanced scrutiny through determination by committee.
- 5.4 Members noted that government is keen to extend the range of applications that can be determined under the section 43A scheme of delegation, but at this stage concluded that the council's current scheme achieves an appropriate balance between ensuring scrutiny of appropriate cases and efficiency of decision making. It was accepted that the current scheme of delegation has helped maintain a reasonable level of performance in terms of timescales for decisions on planning applications in circumstances where staff resource has been reduced due to vacant posts.

- 5.5 However, members also had regard to advice from officers regarding practical difficulties associated with implementation of the current scheme and issues associated with objections that are made anonymously and/ or without a postal address. Specifically, clause 1(b) of the current scheme does not allow the exercise of delegation in respect of: -

applications which attract five or more material planning objections which are recommended for approval (more than one objection from the same individual, household or organisation will count as one objection for the purposes of the scheme of delegation)

- 5.6 Members noted this clause is intended to identify applications that are of wider public interest and the exclusion ensures that such applications can be determined by committee in appropriate circumstance. However, members recognised the practical difficulty of determining the number of objections in circumstances where an objection is submitted without a name or identifiable postal address. Members agreed that the scheme of delegation should be amended to clarify that while unattributable objections would still be taken into account in the determination of an application, they will not be counted for purposes of calculating the number of valid objections in terms of applying delegation. For the avoidance of doubt, this exclusion would not apply in circumstances where an identified individual submits a representation and asks for personal details to be withheld for safety or similar justifiable reasons; a representation submitted in these circumstances would not be anonymous, rather the council would maintain the individual's anonymity in so far as legislatively possible. In addition, members considered it was prudent to amend the scheme to clarify that the council's chief planning officer, will determine the competency/ materiality of any objection that is received.
- 5.7 Accordingly, members agreed that the current scheme of delegation should be retained with the following note added for clarification purposes.

* For the purpose of implementation of this scheme of delegation, objections must be based on competent planning grounds the competency having been assessed by the Chief Planning Officer; anonymous objections and/or objections that are not attributable to an identifiable and recognised postal address will not be counted as objections in terms of applying the scheme of delegation.

- 5.8 Committee is advised that the scheme of delegation cannot be amended until and unless it is approved by Scottish Ministers.

6. FINANCIAL IMPLICATIONS

- 6.1 There are no financial implications arising directly from this report. The proposals aim to deliver on our priority that the council is efficient and effective as detailed in our Council Plan. This has the potential to reduce officer and member time spent on governance matters which has a positive financial impact.

7. RISK MANAGEMENT

- 7.1 There are no issues arising from the recommendation of this report.

8. ENVIRONMENTAL IMPLICATIONS

- 8.1 There are no implications arising from the recommendation of this report. Environmental implications associated with the determination of a planning application

under the scheme of delegation will be considered, in so far as they may be material, in the determination of any such application.

9. EQUALITY IMPACT ASSESSMENT, HUMAN RIGHTS AND FAIRER SCOTLAND DUTY

- 9.1 A screening Equality Impact Assessment has been carried out and a full EIA is not required as the report is technical. Any relevant matters associated with the determination of a planning application under the scheme of delegation will be considered, in so far as they may be material, in the determination of any such application.

NOTE: No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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Appendix 1: Scheme of delegation, including tracked changes