

## Equality Impact Assessment Planning Scheme of Delegation

### 1 Introduction, aims and objectives

An equality impact assessment (EIA) is a tool that helps public authorities (1) make sure their policies, and the ways they carry out their functions, do what they are intended to do and for everybody. EIAs help public authorities meet the requirements of the equality duties and identify active steps they can take to promote equality. Carrying out an EIA involves systematically assessing the likely (or actual) effects of policies on people in respect of disability, gender and racial equality, and, where authorities choose, wider equality areas.(2) This includes looking for opportunities to promote equality that have previously been missed or could be better used, as well as negative or adverse impacts that can be removed or mitigated,(3) where possible. If any negative or adverse impacts amount to unlawful discrimination, they must be removed.<sup>1</sup>

This EIA is concerned with the changes to the Council Constitution and has been revised to take account of the final resolution on the 22 September 2011.

The changes originated through a review of the Planning Scheme of Delegation brought about following a debate at the 2009 Council AGM, however due to a change in the economic environment, the Cabinet sought to extend the amendments to streamline the referral system. This was in line with the Killian Pretty review of “Planning applications: A faster and more responsive system”. In November 2010 members changed the Scheme of Delegation with the proviso that it be reviewed within 12 months.

In particular the Killian Pretty report focused on key drivers, such as “making the system more proportionate – to make the process simpler for small scale, low impact developments; and to free up resources to deal better with the larger developments which will make the biggest contribution to the future development of the area”.

In recommendation 4.2.2 it is stated that:

“Delegation of decision-making The recent Planning Advisory Service report identified how some planning authorities are achieving better planning outcomes by improving the effectiveness and efficiency of the way they make planning decisions by delegation and at committees. The common factors characterising this good practice were identified as:

- maximising the number of delegated planning decisions – delegating higher than 90% of planning decisions, which gives planning

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<sup>1</sup> Equality impact assessment guidance - A step-by-step guide to integrating equality impact assessment into policymaking and review – Issued by Equality and Human Rights Commission ISBN 978 1 84206 240 1

committees more time to focus on complex and controversial applications;

- implementing clear systems for reporting on delegated decisions;
- regularly reviewing the delegation scheme – introducing an appropriate level of scrutiny to reassure councillors and the public that a high rate of delegation does not affect the quality of planning decisions;
- increasing councillor knowledge and awareness;
- briefing councillors effectively;
- improving the quality of information for councillors, stakeholders and the general public;
- managing committee meetings more consistently;
- raising the profile of the planning committee; and
- evaluating and reviewing procedures. “

Killian Pretty introduce a test of *wider significance or major importance* as being those applications which should be referred to elected members.

It should also be acknowledged that there is a presumption in the Planning Acts in favour of permission (Listed Building Consent being the exception) and as such most of the community's engagement is directed at prevention rather than management of the process. As such equality impact assessments would tend to concentrate on the relevant groups within the community, when it may well be the rights of the applicant which are disproportionately affected. For example, race is rarely an overt issue in planning applications, however, for applications for gypsies, travellers and showmen opposition could be focused on a life style choice. It is therefore imperative that an equalities impact looks at all stakeholders in the process.

Relevant groups identified for this EIA are race, gender, disability, age, sexual orientation and religion/belief.

It is within this framework that the Cabinet reviewed the scheme of delegation.

## **2 What are the changes**

The constitution prior to 11 November 2010 had all applications being determined under delegation other than major applications, those with environmental impact assessments or the five automatic referrals to Development Control Committee. The latter can be summarised as:

- Application is a departure from the development plan
- The recommendation is for approval where the initial view was for refusal, or vice versa
- Five letters of objection
- Town or parish council hold a contrary view to the officer, and can substantiate it on policy grounds
- Ward member so requests, with policy grounds.

In September 2011 the additional change was to introduce public speaking at Development Control Committee and move the parish council involvement from the sites panel to the committee meeting. This latter change was introduced for two reasons:

- To allow the parish/town council to address the DCC at the point of decision making.
- To reduce the perception of prejudicial access to DCC by one party over another.

The changed policy, full text in Appendix A, delegates all applications as before, but applies a filter to requests by parish and ward councillors. It also removes the automatic referral for five letters of objection, reversal of opinion and departures from the development plan.

### **3 Initial Screening**

#### **Departures from Development Plan**

This automatic referral was in place due to a legislative requirement to consult the Secretary of State where the Council was minded to depart from the development plan. This legislative requirement has been rescinded, and as such it has become superfluous. It is not considered that individuals or relevant groups will be affected by this change; particularly as such applications will be caught by the wider significance or major importance test.

#### **Recommendation at odds with initial view**

This requirement goes back many years and involves the initial view of the application to state whether the officer is likely to recommend permission or refusal. Recent advice has called this practice into question, as it may be considered that pre-determination had occurred. As such officers have chosen to neither classify each application as support nor oppose. This has left the system in a state of disrepute. As the initial view is only communicated to Ward Members and town/parishes, its circulation is limited and not considered to adversely affect any individual or relevant group.

#### **Five letters of objection**

Where five or more letters of objection are received, and the officer is recommending permission, an automatic referral was triggered. This practice has also fallen into disrepute as neighbours have sought ways of delaying decisions. Analysis of outcomes shows that in the review period no appreciable benefit was gained by this process, and that no relevant group were disproportionately affected. On the contrary, there was anecdotal evidence that relevant groups were disadvantaged by this system. There is strong evidence that individual households misused this system to cause distress to applicants, and in one case multiple fictitious letters of objection were received in an attempt to block a legitimate proposal. It is considered that dropping this requirement has a marginally beneficial impact on the relevant groups.

#### **Town or parish council hold a contrary view**

This is possibly the most controversial proposal in the changes, and the one which caused the greatest amount of debate. The Performance Overview and Scrutiny Committee recommended guillotining the responses from town and parishes at 21 days from the start of consultation. Cabinet favoured a flexible approach to the time frame, but introducing an intermediate stage, rather than an automatic trigger. Whilst towns and parishes are not in themselves covered by the categories of race, gender, disability, age, sexual orientation or religious beliefs, it could be argued that they represent a community who can be so stratified. It is considered that how parishes represent their community is a matter for them, but a second stage appraisal has been carried out on this element to ensure that any error is not compounded at the District level.

### **Introduction of Public Speaking.**

With the reduction in numbers of planning applications at DCC it has been possible to introduce public speaking at committee. This is seen as an entirely positive step and one which benefits all parties. It has been argued that those with more financial weight may have the ability to employ articulate people to advocate for them at DCC. It should be noted however that this is currently true of written representations, and as such there would be no greater advantage or disadvantage. It is also acknowledged that members of DCC are capable of distilling the policy and material considerations.

### **Ward member so requests**

Once again, the affect of the change is removed from the relevant groups by the involvement by a ward councillor. It is acknowledged that a second stage appraisal is warranted as the ward members represent the community and the District Council. It is not, however, considered that the procedure change has any direct impact on ward members' rights due to their own affiliation to one or more of the relevant groups.

## **4 Second Level Review**

The second stage review is targeted at the individuals and relevant groups within the community served by a town or parish. It must be remembered that the determination of a planning application is merely the appropriate implementation of existing policy. This policy has been through community scrutiny, and public enquiry prior to adoption. The Planning Service Equality Impact Assessment identifies multitude of stakeholder groups, many of which are listed in Appendix B.

As such the merits of the proposal are not in question; it may be that interpretation is. As both officer and member (of DCC) are bound by the requirements of the Planning Acts to determine applications in accordance with the Development Plan, it is no surprise that it is rare for members to overturn an officer recommendation. On those occasions where applications are overturned there is little evidence that the outcome to the community has been beneficial. It is considered that there is no perceivable benefit or deficit to any of the relevant groups and there is no evidence, through complaints or feedback, that any segment of the community will be disproportionately affected.

As the issues which affect town and parishes can also influence ward members, both factors are taken as one. It should be recognised that there is no criticism directed at the role of the parish/town council, or councillor, but recognition of the unpredictable environment, and the subconscious filters which operate within the populace as a whole.

The consultation on the revised scheme was concentrated on district councillors and parish councils. The Performance Overview and Scrutiny Committee sent out questionnaires in 2009 and held a seminar session in February 2010 for town and parish councils. It is acknowledged that the Cabinet amendments were not consulted on widely, but given the rapid changes in the economic environment this was not possible to carry out extensive re-consultation. The proposals were, however, taken before the independent Standards Committee and were acknowledged as acceptable. In mitigation, it was resolved that the change would be reviewed after 12 months where any affects could be noted and adjustments made.

Group	Positive	Negative	Neutral	Comment
Race	✓			The race or lifestyle choice of an applicant can sometimes result in negative public responses which are disproportionate to the type and scale of the proposal. The revised process will allow the Head of Planning to seek clarification over the relevant issues so that those which are material to the application can be taken forward. Public speaking may be affected by an individuals inability to articulate their views in a second language. The scheme does not require an objector or support to attend personally, but allows for them to be represented, removing this risk.
Gender			✓	No evidence that gender is a determining factor as to which applications go to DCC
Disability			✓	No evidence that disability is a determining factor as to which applications go to DCC. It is acknowledged that access to the Council Chamber is not directly accessed by an independent lift, however as DCC is a day time meeting, the access to the lift in the Long Block is readily available.
Age	✓			There has been some, though at a very low level, experience that developments associated with age, whether it is youth or the elderly, has been a determining factor for which applications go to DCC. Residential care and youth facilities have a higher than normal profile. Even permitted development proposals, for example play equipment, raise disproportionate amounts of community engagement. The revised process will allow the Head of Planning to seek clarification over the relevant issues so that those which are material to the application can be taken forward.  It is accepted that as DCC is a day time meeting, it is more likely that public speaking would be more readily available to those who are retired or not working.
Sexual Orientation			✓	No evidence that sexual orientation is a determining factor as to which applications go to DCC within SDC. There is however evidence that it has been an issue in other local planning authorities.

Religion – Belief			✓	There is no evidence that religion has been a determining factor as to which application goes to DCC. There is a possibility that life style choices and beliefs could be positively affected by the changes, but this is dealt with under race.
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It is considered that the proposals have no negative impact on the relevant groups in the community, but it could be argued that there are demonstrable benefits to applicants through the changes identified above.

Nothing in this assessment should be read to be affecting the human rights of the individual as these are part of the consideration of the planning merits and taken on a case by case basis.

## 5 Appendix A - Planning Scheme of Delegation

- a. The delegation of all planning applications and other associated decisions and actions authorised under the terms of the Planning and Listed Building Acts are considered to fall within the scheme of delegation and will be determined by the Head of Planning (or in his absence by the Strategic Head of Development Services) **unless:-**
- The Chair of Development Control Committee (or in his absence or legal incapacity the Vice Chair of the Committee) or
  - the Head of Planning (or in his absence the Strategic Head of Development Services)

requires any application to be placed before the Development Control Committee.

- b. Requests for items to be placed before the Development Control Committee may be made to the Head of Planning by the Parish or Town Council, or Ward Councillor within whose ward the proposal lies. Where a Parish is multi-warded, any Ward Councillor from that Parish may request a referral.
- c. Such a request must be made in writing (this includes email) and include a summary of the planning reasons relevant to the consideration. This summary will form part of the officer report. Requests must be made at any time before the consideration of the proposal by the panel of planning staff who make recommendations to the Head of Planning prior to him determining such matters. No application will be placed before the panel until the expiry of the consultation period being at least 21 days after the relevant weekly list is published.
- d. The above operational arrangement excludes any application which is a matter of technical appraisal, fact or legal opinion, applications with fixed determination periods such as notifications, approval of details reserved by conditions and minor amendments. All these will be determined by the Head of Planning (or in his absence by the Strategic Head of Development Services).

### **Refusal of applications superseded by events or where Information requested has not been received.**

- e. Applications which have been considered by Development Control Committee may be refused if the applicants or their appointed agents have not made reasonable attempts to complete a legal agreement and/or necessary amendments within one month of the resolution by Development Control Committee. At the discretion of the Head of Planning these applications may be refused on the basis that the applicant has failed to satisfy the terms of the relevant development plan policy