

# **SOLIHULL METROPOLITAN BOROUGH COUNCIL**

## **TERMS OF REFERENCE** **AND OFFICER DELEGATIONS** **OF THE** **PLANNING COMMITTEE**

**In force from 16<sup>th</sup> October 2002**

**Amended 22<sup>nd</sup> November 2004**

**Amended 8<sup>th</sup> February 2005**

**Amended 7<sup>th</sup> April 2009**

**Amended May 2015**

## **Terms of Reference of the Planning Committee and Officer Delegations**

### **Explanatory Introduction**

The Council's planning powers fall into two main areas – making policy and determining applications.

The responsibility for making planning policy is an executive function which is undertaken by the Cabinet Portfolio Holder for Economic Development & Land and the Cabinet. In addition, some of the decisions on policy matters are made by the Full Council.

Council functions which relate to town and country planning matters cannot be decided by the Cabinet but are delegated by Council to be dealt with by the Planning Committee. This document sets out in detail which statutory functions are the responsibility of the Committee, the allocation of functions to the Planning Committee and those matters which are reserved for Council approval. Officer delegations are also shown.

### **The main functions and terms of reference of the Planning Committee (9 Members): -**

All regulatory matters under the Town & Country Planning Act (1990) (TCPA) (as amended) or any other planning related Acts, but not policy or other executive functions.

- A. Town and Country Planning and Development Control.
- B. Miscellaneous functions involving public rights of way, hedgerows and trees (includes making Tree Preservation Orders).
- C. Local Act functions (National Exhibition Centre).
- D. Contaminated land – service of remediation notices.
- E. Enforcement of control of pollution and air quality (other matters are a Cabinet responsibility).
- F. Obtaining information.

**Note** – Building Control functions, designation of conservation areas, designation of Neighbourhood Planning areas, revocation of permissions and making of Article 4 Directions are Cabinet functions.

## **Executive Powers of Planning Committee**

The Committee shall have power to determine all matters relating to town and country planning and development control within its terms of reference except for any matter which the Council determines shall be reserved for determination by the Council.

## **General Delegation to Officers**

The fact that a function has been delegated to the Chief Executive, a Director or any other Officer does not require the Chief Executive/ Director/Officer to give the matter his/her personal attention and he/she may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However, the Chief Executive/Director/Officer remains responsible for any decision taken pursuant to such arrangements.

## **Functions delegated to the Chief Executive, Corporate Directors, Assistant Directors and Heads of Service**

- (a) The power to take any action in the name of the Council which is required to be taken to implement any decision of the Planning Committee, including entering into contracts and incurring expenditure;
- (b) To authorise works to be carried out by the Council in default of compliance with a notice served on an owner, occupier or other party and to recover the costs involved;
- (c) To serve any notice required or authorised by law to be given by or on behalf of the Council or in the name of an authorised or proper officer;
- (d) Subject to the statutory Codes of Practice and corporate policies, to grant authorisations under the Regulation of Investigatory Powers Act 2000 in respect of covert surveillance and the use or conduct of covert human intelligence sources;
- (e) In relation to any functions for which they are the responsible officer, the Chief Executive or a Corporate Director may:-
  - (i) act as an authorised or proper officer where qualified to do so and where no other officer has been appointed;
  - (ii) appoint officers to act as a proper officer for the purpose of legislation and for the purpose of giving statutory notices on behalf of the Council;

- (iii) reserve to themselves for decision or referral to the Committee any decision which is delegated to another officer; and
- (iv) shall have power to give to officers within their Directorate such directions as to the exercise of delegated powers as they shall determine.

### **Authorisation of Legal and Other Proceedings**

- (a) Other than for those matters reserved to the Committee, the post holders listed in the Appendix may authorise legal proceedings to be brought or other appropriate action to be taken in respect of legislation which is within their designated responsibilities subject in all cases to prior consultation with, and the evidence being to the satisfaction of, the Solicitor to the Council;
- (b) Any officer referred to in paragraph (c) above shall in relation to any matter authorised by him, also have authority to lay informations in the Magistrates Court;
- (c) The Director of Resources and the Solicitor to the Council may take all necessary steps, including laying informations in the Magistrates Court in relation to the commencement and conduct of all legal proceedings (including inquiries & hearings) authorised by the Council or under delegated powers, and to defend any legal proceedings brought against the Council;
- (d) The Chief Executive may, in consultation with the Chairman and Vice-Chairman of the Committee, authorise the issue of legal proceedings for the purposes of obtaining injunctions in all matters relating to the functions of the Committee.

### **Planning Functions Delegated to the Head of Development Management from Planning Committee**

The determination of all non-executive planning decisions and allied and related regulatory decisions (except where they fall to be dealt with elsewhere as required by the Constitution) including all planning applications and applications for advertisement consent, listed building consent and conservation consent, as well as conducting any appeal, hearing or inquiry under Planning legislation including Community Infrastructure Levy Regulations 2010 as amended are delegated to the Head of Development & Regulatory Management **except** for the following which must be exercised by the Planning Committee:

1. The determination of planning and allied<sup>1</sup> applications which provide for, or includes the following:
  - a) A substantial departure from the development plan which it is not proposed to refuse.
  - b) The Council is entering into an agreement under S106 of the act (unless the application repeats, amends or otherwise updates a similar agreement already entered into or relates to a minor and non-controversial matter).
  - c) The approval of an application which in the opinion of the Head of Development Management would have a significant impact outside of its immediate vicinity, e.g. it would generate significant volumes of traffic, or it would have a significant impact on trading; or it would be a prominent feature in the landscape, unless the proposals are an amendment to an existing approval.
  - d) Where the proposal has given rise to substantial weight of public concern and in the opinion of the Head of Development Management should be referred to Planning Committee<sup>2</sup> unless the proposals are (a) an amendment to an existing approval and the representations do not relate to the variation proposed or (b) a form of prior approval or other similar application where permission is granted by default if a decision is not made within a prescribed time and there is not an opportunity to report the matter to a Planning Committee.
  - e) Any Member of the Council makes a written request, setting out planning reason(s) why an application should not be determined under delegated powers, before the neighbour notification period expires<sup>3</sup>.
  - f) The application has been submitted by or on behalf of the Council<sup>4</sup> and there has been at least one objection on land use planning grounds.
  - g) The application relates to Council<sup>4</sup> owned land or property and there has been at least one objection on land use planning grounds.

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<sup>1</sup> Including (but not exclusively so) applications relating to advertisements, listed buildings, lawful development certificates etc

<sup>2</sup> This shall generally be interpreted as being more than 5 representations which promote a contrary view to the intended decision. Multiple representations from the same address shall count as a single representation.

<sup>3</sup> In the event that an objection has been received then this period is extended by an additional 5 working days.

<sup>4</sup> For these purposes this will also include applications submitted by local authority schools, Solihull Community Housing and any other semi-autonomous organisations that report or are otherwise managed by the Council.

- h) The amendment of existing S106 agreements which seek to reduce the mitigation required in connection with a development.
- i) The applicant is an elected member of the Council (or a close relative<sup>5</sup> of a member).
- j) The applicant is a senior officer of the Council or an officer in the Planning Service. The Council will also take reasonable measures that applications by any other Officer of the Council who may have regular or frequent contact with Planning Officers undertaking Development Management duties (or close relative<sup>5</sup> of such an officer) are determined by Planning Committee.

In exercising delegated powers the Head of Development Management shall ensure that any planning and allied application that gives rise to an objection, but does not otherwise fall within one of the classes outlined above, shall only be determined following an assessment by the case officer and a review by a senior officer.

2. Authorisation of enforcement action, including through the Courts,<sup>6</sup> where in the opinion of the Head of Development Management the matter relates to a sensitive or controversial case (with the exception of emergency actions).
3. Powers in relation to a joint committee including creating, conferring powers and dissolution of such a committee under sections 29-31 of the Planning & Compulsory Purchase Act
4. Power to serve a completion notice under section 94(2) of the TCPA
5. Power to determine applications for Hazardous Substances consent under the Planning (Hazardous Substances) Act 1990.
6. Power to serve a building preservation notice under the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990 (with the exception of emergency actions).
7. Powers to acquire a listed building in need of repair and to serve a repairs notice under the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.

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<sup>5</sup> Close relative includes their spouse, civil partner, co-habiting partner (or person with whom they are living as if they are civil partners or spouse), sibling, parent or son/daughter

<sup>6</sup> This includes (but not exclusively so) powers under section 171C, 172, 187A, 183(1) & 215 of the Town & Country Planning Act 1990; associated enforcement powers in the Planning (Listed Buildings and Conservation Areas) Act 1990; and the instigation of prosecutions.

8. Powers to execute urgent works under the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990 (with the exception of emergency actions).
9. Review of Old Mineral Permissions (ROMPs) and similar under the Planning & Compensation Act 1991 and the Environment Act 1995
10. Power to register common land or town/village greens.

Nothing in the delegation agreement shall prevent the Head of Development Management reporting any matter to Planning Committee for a decision if considered appropriate.

### **Additional Matters Delegated to the Head of Development and Regulatory Management**

Notwithstanding the above, the following additional matters may be dealt under delegated powers to the Head of Development and Regulatory Management:

1. The making of minor<sup>7</sup> amendments to conditions and/or reasons in relation to applications that have been reported to Planning Committee but before the decision notice is despatched.
2. The completion of S106 agreements following a resolution of Planning Committee to grant permission and the heads of terms<sup>8</sup> from the Committee report have been incorporated into the agreement.
3. The refusal of applications which Planning Committee resolved to approve subject to a S106 agreement in instances when the agreement has not been signed in a timely<sup>9</sup> manner.

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<sup>7</sup> This would relate to drafting amendments that would provide greater clarity or robustness to the conditions and/or reasons and would not be used to omit conditions/reasons added by the Committee.

<sup>8</sup> A head of term may not necessarily be incorporated into the agreement if a material change in circumstances indicates that such provision is no longer required.

<sup>9</sup> In the opinion of the Head of Development Management

A. Functions relating to town and country planning and development control	Officer delegations
<p>1. Appeals &amp; Hearings</p> <p>Section 78 &amp; 79 of the Town &amp; Country Planning Act 1990</p>	<p>Head of Development Management – Amendment/withdrawal of a reason for refusal.</p> <p>Head of Development Management – Agreeing a schedule of conditions recommended to be attached to any approval granted upon appeal</p>
<p>2. Power to grant a street works licence.</p> <p>Section 50 of the New Roads and Street Works Act 1991 (c. 22).</p>	<p>Assistant Director, Places Directorate</p>
<p>3. Power to permit deposit of builder's skip on highway.</p> <p>Section 139 of the Highways Act 1980 (c. 66)</p>	<p>Assistant Director, Places Directorate</p>
<p>4. Power to license planting, retention and maintenance of trees etc. in part of highway.</p> <p>Section 142 of the Highways Act 1980.</p>	<p>Assistant Director, Places Directorate</p>
<p>5. Power to authorise erection of stiles etc. on footpaths or bridleways.</p> <p>Section 147 of the Highways Act 1980</p>	<p>Assistant Director, Places Directorate</p>



<p>6. Power to license works in relation to buildings etc. which obstruct the highway. Section 169 of the Highways Act 1980.</p>	<p>Assistant Director, Places Directorate</p>
<p>7. Power to consent to temporary deposits or excavations in streets. Section 171 of the Highways Act 1980.</p>	<p>Assistant Director, Places Directorate</p>
<p>8. Power to dispense with obligation to erect hoarding or fence. Section 172 of the Highways Act 1980.</p>	<p>Assistant Director, Places Directorate</p>
<p>9. Power to restrict the placing of rails, beams etc. over highways. Section 178 of the Highways Act 1980.</p>	<p>Assistant Director, Places Directorate</p>
<p>10. Power to consent to construction of cellars etc. under street. Section 179 of the Highways Act 1980</p>	<p>Assistant Director, Places Directorate</p>
<p>11. Power to consent to the making of openings into cellars etc. under streets, and pavement lights and ventilators. Section 180 of the Highways Act 1980.</p>	<p>Assistant Director, Places Directorate</p>
<p><b>B. Miscellaneous functions</b> <b>Functions relating to public rights of way, hedgerows and trees</b></p>	

<p>12. Power to create footpath or bridleway by agreement. Section 25 of the Highways Act 1980 (c. 66).</p>	<p>Assistant Director, Places Directorate</p>
<p>13. Power to create footpaths and bridleways. Section 26 of the Highways Act 1980.</p>	<p>Assistant Director, Places Directorate</p>
<p>14. Duty to keep register of information with respect to maps, statements and declarations. Section 31A of the Highways Act 1980.</p>	<p>Assistant Director, Places Directorate</p>
<p>15. Power to stop up footpaths and bridleways. Section 118 of the Highways Act 1980.</p>	<p>Assistant Director, Places Directorate</p>
<p>16. Power to determine application for public path extinguishment order. Sections 118ZA and 118C(2) of the Highways Act 1980.</p>	<p>Assistant Director, Places Directorate</p>
<p>17. Power to make a rail crossing extinguishment order. Section 118A of the Highways Act 1980.</p>	<p>Assistant Director, Places Directorate</p>
<p>18. Power to make a special extinguishment order. Section 118B of the Highways Act 1980</p>	<p>Assistant Director, Places Directorate</p>
<p>19. Power to divert footpaths and bridleways.</p>	<p>Assistant Director, Places Directorate in cases where development has been</p>

Section 119 of the Highways Act 1980	approved.
20. Power to make a public path Sections 119ZA and 119C(4) of the Highways Act 1980.diversion order	Assistant Director, Places Directorate in cases where development has been approved.
21. Power to make a rail crossing diversion order. Section 119A of the Highways Act 1980.	Assistant Director, Places Directorate
22. Power to make a special diversion order. Section 119B of the Highways Act 1980	Assistant Director, Places Directorate
23. Power to require applicant for order to enter into agreement. Section 119C(3) of the Highways Act 1980	Assistant Director, Places Directorate
24. Power to make an SSSI diversion order. Section 119D of the Highways Act 1980.	Assistant Director, Places Directorate
25. Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980. Section 121B of the Highways Act 1980.	Assistant Director, Places Directorate
26. Power to decline to determine certain applications.	Assistant Director, Places Directorate

Section 121C of the Highways Act 1980.	
27. Duty to assert and protect the rights of the public to use and enjoyment of highways. Section 130 of the Highways Act 1980.	Assistant Director, Places Directorate to authorise enforcement of any matter which under Part IX of the Highways Act 1980 Lawful and Unlawful Interference with Highways and Streets is a non-executive matter.
28. Duty to serve notice of proposed action in relation to obstruction. Section 130A of the Highways Act 1980.	Assistant Director, Places Directorate to serve notices.
29. Power to apply for variation of order under section 130B of the Highways Act 1980. Section 130B(7) of the Highways Act 1980	Assistant Director, Places Directorate
30. Power to authorise temporary disturbance of surface of footpath or bridleway. Section 135 of the Highways Act 1980.	Assistant Director, Places Directorate
31. Power temporarily to divert footpath or bridleway. Section 135A of the Highways Act 1980.	Assistant Director, Places Directorate
32. Functions relating to the making good of damage and the removal of obstructions. Section 135B of the Highways Act 1980.	Assistant Director, Places Directorate

<p>33. Powers relating to the removal of things so deposited on highways as to be a nuisance.</p> <p>Section 149 of the Highways Act 1980.</p>	<p>Assistant Director, Places Directorate</p>
<p>34. Power to extinguish certain public rights of way.</p> <p>Section 32 of the Acquisition of Land Act 1981 (c. 67).</p>	<p>Assistant Director, Places Directorate</p>
<p>35. Duty to keep definitive map and statement under review.</p> <p>Section 53 of the Wildlife and Countryside Act 1981 (c. 69)</p>	<p>Assistant Director, Places Directorate</p>
<p>36. Power to include modifications in other orders.</p> <p>Section 53A of the Wildlife and Countryside Act 1981.</p>	<p>Assistant Director, Places Directorate</p>
<p>37. Duty to keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and Countryside Act 1981.</p> <p>Section 53B of the Wildlife and Countryside Act 1981.</p>	<p>Assistant Director, Places Directorate</p>
<p>38. Duty to reclassify roads used as public paths.</p> <p>Section 54 of the Wildlife and Countryside Act 1981.</p>	<p>Assistant Director, Places Directorate</p>
<p>39. Power to prepare map and statement by way of consolidation of definitive map and statement.</p> <p>Section 57A of the Wildlife and Countryside Act 1981.</p>	<p>Assistant Director, Places Directorate</p>

<p>40. Power to designate footpath as cycle track. Section 3 of the Cycle Tracks Act 1984 (c. 38).</p>	<p>Assistant Director, Places Directorate</p>
<p>41. Power to extinguish public right of way over land acquired for clearance. Section 294 of the Housing Act 1981 (c. 68).</p>	<p>Assistant Director, Places Directorate</p>
<p>42. Power to authorise stopping-up or diversion of footpath or bridleway. Section 257 of the Town and Country Planning Act 1990.</p>	<p>Assistant Director, Places Directorate</p>
<p>43. Power to extinguish public rights of way over land held for planning purposes. Section 258 of the Town and Country Planning Act 1990.</p>	<p>Assistant Director, Places Directorate</p>
<p>44. Power to enter into agreements with respect to means of access. Section 35 of the Countryside and Rights of Way Act 2000 (c. 37).</p>	<p>Assistant Director, Places Directorate</p>
<p>45. Power to provide access in absence of agreement. Section 37 of the Countryside and Rights of Way Act 2000.</p>	<p>Assistant Director, Places Directorate</p>
<p>46. Powers relating to the preservation of trees Sections 197 to 214D of the Town and Country Planning Act 1990, and the Trees Regulations 1999 (S.I. 1999/1892).</p>	<p>Head of Development Management to make and confirm Tree Preservation Orders</p>
<p><b>C. Enforcement of Control of Pollution or air quality</b></p>	

47. To approve or refuse chimney heights Clean Air Act, 1993	Assistant Director, Places Directorate
48. To approve the installation of furnaces and plant for arresting grit and dust Clean Air Act, 1993	Assistant Director, Places Directorate
49. To approve mandatory grants in respect of Smoke Control Areas, and to approve additional/discretionary grants in respect of Smoke Control Areas in accordance with criteria established by the Committee;	Assistant Director, Places Directorate
50. To serve notices under the Clean Air Act 1993.	Assistant Director, Places Directorate
51. To carry into effect the provisions of the Integrated Pollution Prevention and Control (IPPC) regime and Local Air Pollution Control (LAPC) and to approve but not refuse authorisations/permits under IPPC and LAPC.	Assistant Director, Places Directorate
52. To carry into effect the provisions of Section 6 of the Environmental Protection Act 1990 apart from the refusal of authorisations.	Assistant Director, Places Directorate
<b>D. Functions relating to statutory nuisances</b>	
53. To register, Re-register and determine noise levels for premises in Noise Abatement Zones;	Assistant Director, Places Directorate
54. To serve notices under Section 80 of the Environmental Protection Act, 1990 (Summary Proceedings by Local Authorities in respect of noise and statutory nuisance). This function in respect of transient noise may be delegated to any duly qualified Environmental Health Officer subject to prior approval of the Assistant Director, Places Directorate;	Assistant Director, Places Directorate
55. To serve and enforce appropriate Notices under Section 2-5 of the Noise and Statutory Nuisances Act 1993 in respect of noise in the street, and to serve Notices under Section 10 to recover expenses reasonably incurred in preventing or abating a statutory nuisance by putting	Assistant Director, Places Directorate

a legal charge on premises;	
56. To serve notices or grant consent under Sections 60 and 61 of the Control of Pollution Act 1974 (Control of noise on construction sites).	Assistant Director, Places Directorate
57. To authorise the silencing of burglar alarms in default of an abatement notice.	Assistant Director, Places Directorate
58. Service of abatement notice in respect of a statutory nuisance	Assistant Director, Places Directorate
59. The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area.	Planning Committee
60. The inspection of the authority's area to detect any statutory nuisance.	Assistant Director, Places Directorate
61. The investigation of any complaint as to the existence of a statutory nuisance.	Assistant Director, Places Directorate
<b>E. Functions of obtaining information</b>	
62. The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land except in connection with the exercise of statutory functions which are the responsibility of the executive.	The Chief Executive and all Corporate Directors and designated proper officers.
63. The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 except in connection with the exercise of statutory functions which are the responsibility of the executive.	The Chief Executive and all Corporate Directors and designated proper officers.