

8. REVIEW OF STANDING ORDERS IN RESPECT OF REFERRAL OF PLANNING APPLICATIONS TO AUTHORITY (JRS)

Purpose of the report

1. To review the Standing Order which requires the referral of planning applications which are considered to be departures, or potential departures, from Development Plan policy to a meeting of the Authority.

At the meeting of Authority held on 1 February 2013, in accordance with Standing Order 1.14, Cllr Chris Furness moved the following motion:

“That the Authority review Standing Order 1.48 (as set out in part one, section D) which permits the referral, by officers, of Planning Committee decisions to Authority Meetings”

Following discussion the Authority agreed to the review, suggesting that it should include a consideration of the procedures used by constituent Councils and other National Park Authorities, and asked that a report be brought back to the March Authority meeting. (Minute 5/13 refers.)”

Key Issues

- Whether the current Standing Order provides an appropriate safeguard in respect of implementing adopted Development Plan policies;
- Whether there is an alternative approach which would achieve this whilst giving responsibility for decision-making to the Planning Committee.

Recommendation:

1. To delete the current Standing Order 1.48 and replace it with the following:

DECISIONS CONTRARY TO THE AUTHORITY’S POLICIES

1. Where following consideration of any matter a Committee or a Sub-Committee is proposing to make a decision which would be a departure from Policy and/or the Officer recommendation (other than minor acceptable exceptions), final determination of the matter shall be deferred until the next meeting of the Committee or Sub-Committee. During the deferment, the relevant officers will prepare a further report for the Committee or Sub-Committee on their provisional views for consideration at the next meeting. The officers’ report will cover:
 - i. the policy implications e.g. whether the decision is a major departure from the development plan or other key policy
 - ii. the budget implications
 - iii. a risk assessment
 - iv. an assessment of the robustness of the provisional reasons, including recommendations on any conditions
2. The Senior Manager advising a Committee or Sub-Committee shall, through the Chair of the meeting, inform the meeting either before or immediately after a vote is taken that this Standing Order applies to that decision and that only a recommendation to a future meeting of the Committee or Sub-Committee can be made at that time.

2. **To delete paragraph A3(z) in Part 4 of standing Orders – Delegation to Committees**
3. **To authorise the Director of Planning to amend the Protocol on Planning Development Control and Planning Policy to reflect the process set out in paragraphs 22 to 27 of the report.**

How does this contribute to our policies and legal obligations?

National Planning Policy Framework (NPPF)

2. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and replaced a significant proportion of central government planning policy with immediate effect. The Government's intention is that the document should be considered to be a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date. In the National Park the development plan currently comprises the East Midlands Regional Plan 2009, the Authority's Core Strategy 2011 and saved policies in the Peak District National Park Local Plan 2001. At the Authority meeting on 1 February 2013 it was agreed that the Core Strategy is considered to be consistent with the NPPF.

National Park Management Plan 2012-17

3. The implementation of the Authority's planning policies in a sound and consistent manner makes a significant contribution to the objectives laid out in the National Park Management Plan and its four headline themes for:
 - A diverse working and cherished landscape;
 - A welcoming and inspiring place;
 - Thriving and vibrant communities; and
 - An enterprising and sustainable economy

Corporate Objectives 2012 – 15

4. The review undertaken in this report furthers Corporate Objective 3: to provide a high quality planning service to the community of the National Park that achieves national park purposes and that is responsive to and contributes to the debate on planning reform nationally and locally. The review of the Standing Order and the exercise of this is required to ensure that all planning decisions are taken in a way which is consistent, reasonable, fair and transparent

Local Development Plan

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70 (2) of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

Current Position: Standing Order 1.48

6. Standing Order 1.48 (1) states:

“Where following consideration of any matter a Committee or a Sub-Committee is proposing to make a decision, which would conflict with the accepted policies or plans of the Authority, or would be a departure from statutory approved plans, other than minor acceptable exceptions, the Committee or Sub-Committee shall not decide on the matter but shall make a recommendation, giving detailed reasons, to a meeting of the Authority for final determination”

Standing Order 1.48 (2) states:

“The Senior Manager advising a Committee or Sub-Committee shall, through the Chair of the meeting, inform the meeting either before or immediately after a vote is taken that this Standing Order applies to that decision and that only a recommendation can be made.”

7. The Standing Order and its implementation has also been the subject of discussions with the Chairman of the Planning Committee earlier in 2012 and the Director of Planning was carrying out a review, at officer level, of how it had worked in practice and was seeking to set out criteria for referral of decisions to the Authority.
8. Appendix 1 sets out the cases which have been referred to Authority in recent years. This shows that the great majority of decisions have been confirmed by the Authority, with the most notable exception being the decision to approve two houses at Coldwell End, Youlgrave, where the Authority meeting overturned the Planning Committee resolution to approve the application contrary to the officer recommendation.
9. It is important to note that the use of the Standing Order has only resulted in decisions to approve significant applications contrary to officer advice being referred to the Authority, rather than all significant decisions, including refusals against officer recommendations. There is an acceptance by officers and members that the use of the Standing Order should be restricted to applications which are either “major” by virtue of their scale or nature or which raise significant policy issues. The approval or refusal of more minor applications contrary to the officer recommendation is less likely to raise significant issues of policy, so the practice has been to allow the Planning Committee decision to be final.
10. **Practice in other LPAs and NPAs**

As part of the review of the use of Standing Order 148, the Director of Planning has asked other National Park Authorities and other Local Planning Authorities in Derbyshire what their practice is on such matters. The following responses were received (any received after the publication of this report will be up-dated at the meeting):

National Park Authorities:

- *Lake District NPA: No reference to Authority*
- *North York Moors NPA: No reference to Authority*
- *Yorkshire Dales NPA: Departures from Planning Officer recommendation (other than on minor matters) referred to the next Planning Committee (see below for details)*
- *Dartmoor NPA: Departures from Planning Officer recommendation (other than on minor matters) referred to the next Planning Committee*
- *No other responses received*

Derbyshire LPAs:

- *Derbyshire Dales DC: No reference to full Council*
- *High Peak Borough Council: decision of Development Control Committee is final unless it is a “major” departure from policy, but in practice this has not been used*
- *Staffordshire Moorlands DC: No reference to full Council*
- *Chesterfield BC: No reference to full Council, but officers say they do not experience approvals contrary to policy*
- *North-East Derbyshire DC: Planning Committee has delegated authority to determine any application and there is no referral to full council.*
- *South Derbyshire DC: Standing Orders require referral of departures to full council, but a practice has been adopted where the Planning Board can*

determine applications contrary to officer advice in accordance with the following procedures. Firstly, the application will be deferred to the next meeting of the Planning Board. During the deferment, the officers will prepare a report on the Board's provisional views for consideration at the next meeting. The officers' report will cover:

- i. the policy implications e.g. whether the decision is a major departure from the development plan*
- ii. the budget implications*
- iii. a risk assessment e.g. the prospects of a successful appeal or other challenge*
- iv. an assessment of the robustness of the Planning Board, provisional reasons, including recommendations on any conditions*

At the deferred meeting, the Planning Board will:

- i. consider the officers' report; and*
- ii. then confirm, modify (e.g. the reasons or conditions) or change its provisional views*

11. In summary, there do not appear to be any other Authorities which have in place exactly the same procedure as this Authority. High Peak Borough Council's Development Control Committee papers include a preamble which states that it is required to refer any "major" departures up to full Council, but the Director of Planning at the Council advises that in practice the Committee decision has been the final decision. The definition of "major" is not set down, so in practice it is based on the advice of officers.
12. The system which exists at a number of Authorities, notably the Yorkshire Dales, Dartmoor and South Derbyshire, is that any decisions which are contrary to officer recommendation (whether for approval or refusal), other than minor applications, are deferred to the next Planning Committee. This allows the officers an opportunity to reconsider their recommendation and to provide a report to the subsequent committee meeting, setting out the policy implications of the resolution of the Planning Committee (particularly where this is to approve the application contrary to officer advice), the soundness of the decision (particularly any reasons for refusal), and any proposed conditions or reasons for refusal.
13. In those Authorities where there is an opportunity to review the impact of decisions, and those where the decision of the Planning Committee is final, there is a clear expectation that any decision which is contrary to the officer's recommendation should be fully set down and justified. Where a motion is made contrary to the officer recommendation, the mover is normally required to provide reason for approving the application, where this is proposed, and reasons for refusal where this is proposed. At South Derbyshire DC the reasons for making a decision contrary to the Development Plan must be set down on a form before any decision is made.
14. **Assessment of Options**

Reflecting on the practice as it has developed at this Authority, some Members have expressed concern that the power of the Planning Committee to make decisions has been removed, whilst others consider that the referral system is a prudent "safety net" which avoids decisions being taken which could seriously compromise the Authority's Development Plan policies. The increased number of referrals to Authority, particularly during 2012, shows that there are an increasing number of cases where the Planning Committee do not agree with officer recommendations of refusal. The reasons for this are unclear, but it may be that the relatively newly adopted policies of the Core Strategy (adopted October 2011) are still in a period of "bedding in" whilst both Members and officers become familiar with how these policies should be applied and implemented.

15. However, it is important that Members recognise that the Development Plan policies (Core Strategy, saved Local Plan policies and SPD/SPG) are the legally adopted policies of the Authority and that they have been through a statutory process. Consequently, they cannot be revised or otherwise modified on a piecemeal basis or adapted to suit particular applications; to do so would result in unsound decisions and would lead to inconsistencies which would discredit the decision-making process. The approval of applications which are departures from adopted policies could undermine these adopted policies and compromise the achievement of the Authority's statutory purposes. If it becomes apparent that one or more policies are not being adhered to on a regular basis or there is a difficulty in application, then the appropriate course of action would be a formal review of that policy. This may be picked up through the Annual Monitoring Report which will now be brought to Planning Committee each year.
16. In some cases the questions of whether a proposal complies with policy is clearly a subjective matter or one of degree; in these cases an approval contrary to officer recommendation is unlikely to be a departure which warrants a referral to Authority, unless the scale of the proposal is such that it would fundamentally undermine policy. There may also be situations where a proposal does not fit squarely within one policy but clearly meets another, so a "balancing act" is required. In other cases, however, a proposal may be directly contrary to a strategic policy of the Authority so its approval can only be regarded as a departure. If an application is for a major development and the decision is contrary to adopted policies, then this would clearly be a departure. Major applications have not been defined for the purposes of the Standing Order, but for the purposes of recording major and other applications, the Government definition is set out in the Town and Country Planning (Development Management Procedure) (England) Order 2010 and includes applications for minerals and waste, residential schemes for more than 10 dwellings or 0.5 ha, and other developments based on floor or site area (1,000 square metres or 1 ha). However, this is not intended to be a schedule of thresholds for defining departures.
17. In the National Park context the size of a development is not the only indicator of its significance and its potential to be a departure from policy. For example, the approval of a new-build, open market house in the open countryside, with no agricultural or other occupational justification would be contrary to policies which the Authority has operated for many years and to national policies which seek to restrict development in the countryside. Although it may only be a single house, this would be a departure. In some cases there may be a discussion as to whether a site is within a village or not, but where this is not in doubt, the approval would be a departure.
18. **The key test in all cases should be whether the approval of an application would have the potential to undermine adopted policy by breaching it in a fundamental way, or by setting a precedent for the mis-application of policy, or because the decision is not based on material planning considerations. Such decisions are likely to be departures. Departures should be seen as properly justified exceptions which prove the rule (or the policy in this case) rather than being a reinterpretation of policy. All such departures must be on the basis of clearly defined material planning considerations, as required by Section 38(6) of the Act, as set out above. Failure to do this would leave decisions open to legal challenge.**
19. Reviewing recent experience (Appendix 1), five of the last six cases where applications have been referred to Authority have been approved (Hungerhill, Hilltop Farm, Fernhill, Stoke Farm, and Rockmill Business Park), with the application for two houses at Coldwell End Youlgrave being refused following a recommendation of approval from the Planning Committee. Given the number of applications received each year (over 1,000), this is not a significant number and could be seen as an appropriate safeguard for a National Park Authority.

However, if this is part of an increasing trend, then officers would be concerned that departures from policy without adequate justification would undermine the recently adopted Core Strategy policies.

20. **Decisions contrary to the Officer recommendation of Approval:** In considering the operation of the Standing Order officers have also been aware that the practice of referring important decisions to Authority has been restricted to situations where the Planning Committee is minded to approve an application contrary to an officer recommendation. There have, however, been a number of decisions on major applications where the Planning Committee has refused an application contrary to the officer recommendation. As with approvals, there will be some cases where the officer recommendation is a balanced one and it is possible to take the alternative view without this decision being seen as fundamentally in conflict with a reasonable interpretation of policy or otherwise unsound. There will, however, be cases where a Planning Committee resolution to refuse an application could raise significant issues of interpretation of policy or where the proposed reasons for refusal may not be sound or easy to defend. In these cases the officer view would be that it would be difficult to defend and appeal and the Authority would therefore be vulnerable to an application for costs. These costs could include two elements: firstly, the Authority may be obliged to employ a consultant to defend the refusal as the officer may not be able to do this without compromising the Authority's positioned their own professional code of conduct there may be, and secondly, the applicant may have a strong case for an award of costs against the Authority. Appendix 2 sets out some advice on the position of officers in these circumstances.
21. Having considered these issues, officers therefore recommend that the proposed revision to the Standing Order incorporate a provision which covers those circumstances where a decision would be contrary to an officer recommendation to approve.
22. **Proposed Revision to Standing Order:**

Having reviewed practice elsewhere and recent experience at this Authority, it is considered that the current Standing Order should be revised so that it reflects that adopted in the Yorkshire Dales, Dartmoor and South Derbyshire, with the final decision on any applications where the Planning Committee is minded to make a decision contrary to the officer recommendation being deferred to the next Planning Committee, rather than to full Authority. This would include the incorporation of a requirement that decisions contrary to the officer recommendation of approval can also be referred to a subsequent committee.
23. Officers are aware that referring decisions which are contrary to their recommendations on a frequent basis may be seen as undermining the authority which has been delegated to the Planning Committee. The proposed amendment to the Standing Order will address this concern whilst providing some safeguards against decisions which may undermine policy or be unsound or open to challenge in other ways.
24. In order to assist in this, in future officers will therefore seek to identify those applications which either by virtue of their scale of nature would be potential departures from Development Plan policy and to state this in the committee report. This would state that in preparing the report, and with the information available to him at the time, the Director of Planning advises that approval (or refusal) of this contrary to the recommendation would be/ is likely/is unlikely/is not a significant departure from policy or is likely to raise significant resources issues and therefore should/should not be referred to a future Planning Committee for further consideration of the policy and resource issues.

25. In those cases which are identified as potential departures, the mover of the motion will be asked by the Chair of the meeting to provide a specific reason or reasons for their motion. Where the motion is for approval the mover must provide material planning reasons why the decision should not be made in accordance with Development Plan policies. Where the motion is for refusal the mover must provide planning reasons for refusal. In both instances the Chair may seek advice from the officers as to the soundness of the motion. If necessary, either the Chair or the senior planning officer in attendance may request a short adjournment prior to the vote so that officers can consider the motion and seek legal advice where appropriate. If the Officers advice is that the application is of a minor nature or significance, the Planning Committee decision will be final.
26. If the Planning Committee is then minded to approve or refuse the application contrary to the officer recommendation, determination of the application will then be deferred to the next Planning Committee meeting (or a later meeting if additional information is required which cannot be provided for the next meeting). A vote will be taken on the resolution; this will not be treated as the final decision, but as an indication of the view of the Planning Committee.
27. During the period of deferment, the officers will prepare a report on the Committee's provisional views for consideration at the next meeting. The officers' report will cover whether the decision is a major departure from the development plan and the potential implications of this. In cases where the Committee is minded to refuse an application contrary to officer recommendation, the report will provide a risk assessment, including the prospects of a successful appeal or other challenge and an assessment of the cost implications of such a decision. At the subsequent meeting, the Planning Committee will consider the officers' report; and then confirm, modify (e.g. the reasons or conditions) or change its provisional views.
28. The recommendation is therefore to delete the current Standing Order and to adopt the following:

DECISIONS CONTRARY TO THE AUTHORITY'S POLICIES

(1) Where following consideration of any matter a Committee or a Sub-Committee is proposing to make a decision which would be a departure from Policy and/or the Officer recommendation (other than minor acceptable exceptions), final determination of the matter shall be deferred until the next meeting of the Committee or Sub-Committee. During the deferment, the relevant officers will prepare a further report for the Committee or Sub-Committee on their provisional views for consideration at the next meeting. The officers' report will cover:

- i. the policy implications e.g. whether the decision is a major departure from the development plan or other key policy
- ii. the budget implications
- iii. a risk assessment
- iv. an assessment of the robustness of the provisional reasons, including recommendations on any conditions

(2) The Senior Manager advising a Committee or Sub-Committee shall, through the Chair of the meeting, inform the meeting either before or immediately after a vote is taken that this Standing Order applies to that decision and that only a recommendation to a future meeting of the Committee or Sub-Committee can be made at that time.

In addition to this, it would be necessary to delete paragraph A3(z) in Part 4 of standing Orders – Delegation to Committees and to authorise the Director of Planning to amend the Protocol on Planning Development Control and Planning Policy to reflect the process

set out in paragraphs 22 to 27 of the report.

Are there any corporate implications members should be concerned about?

29. **Financial**

There are potential financial implications if the Authority makes planning decisions which are unsound and open to legal challenge. There are also cost implications if the Authority refuses applications contrary to officer recommendation if the reasons for refusal are not sound or based on material planning considerations. There may also be financial implications if the Authority is required to employ external consultants in these cases because officers are unable to defend the refusal.

29. **Risk Management**

The proposed revision to the Standing Order would address some of the concerns which have been raised about the recent operation of the Standing Order and it would also cover those circumstances in which the Committee is minded to overturn an officer recommendation of approval. It would, however, allow the Planning Committee to make decisions to approve applications contrary to officer advice, rather than these matters being referred to full Authority.

30. **Sustainability**

The revision to the Standing Order may have an impact on the outcome of planning decisions which, in turn, could have an impact on the location and nature of development in the National Park. This will be monitored in the Annual Monitoring report to the Planning Committee.

31. **Consultees:**

Management Team
Head of Law

32. **Background papers (not previously published)**

None

Appendices

1. An examination of how this Standing Order has been used in recent years
2. Officer's Role where a recommendation is not followed

Report Author, Job Title and Publication Date

John Scott, Director of Planning, 7 March 2013