

Scheme of Delegation

Development Management

As approved at a General Meeting of the Council on 4 July 2023.

As approved by Scottish Ministers on 17 August 2023.

Status

This Scheme of Delegation is prepared by Orkney Islands Council in accordance with Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended), and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

The Scheme of Delegation sets out the circumstances under which planning applications can be determined by the Appointed Officer.

Appointed Officer

The Appointed Officer of the Council in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997, is the Corporate Director for Neighbourhood Services and Infrastructure, the Head of Planning and Community Protection or the Service Manager (Development Management).

Local Development

“Local development” for the purposes of this Scheme of Delegation will include all development other than national development, as designated in a National Planning Framework prepared and published by the Scottish Ministers under Part 1A of the Town and Country Planning (Scotland) Act 1997 (as amended); and major development, as identified in terms of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

Delegated Powers

In respect of local developments, as defined by Section 26A of the Town and Country Planning (Scotland) Act 1997 (as amended) and the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, **subject to the exceptions listed below**, the Appointed Officer is authorised to determine:

- applications for planning permission,
- applications for consent, agreement or approval required by a condition imposed on a grant of planning permission.

Exceptions

The Appointed Officer shall not determine the following planning applications:

- Any planning application which is deemed as a “national development” or a “major development”.
- Any planning application which is significantly contrary to the Local Development Plan and recommended for approval.
- Any planning application which attracts an objection, which meets the terms of a valid representation, and is recommended for approval (see **Note 1** below).
- Any planning application which is subject to an Environmental Impact Assessment.
- Where notice has been given to the Appointed Officer by two or more elected members of the Council that they require the planning application to be referred to the Planning Committee for determination (see **Note 2** below).
- Any planning application made by or on behalf of the following, including their spouse/partner:
 - An Elected Member of the Council.
 - A member of staff employed within the Planning Service (Development Management or Development and Marine Planning).
 - A member of staff routinely servicing the Planning Committee, including the Clerk to the Committee and the Legal Adviser.
 - The Chief Executive or any other Chief Officer.

Note 1.

Should the objection be withdrawn, the matter may be withdrawn from the agenda for the Planning Committee and the application thereafter determined by the Appointed Officer.

Note 2.

The member call-in should be made before the expiry of any statutory notification or publication period or, where no such period exists, within 21 days of publication of the weekly list, whichever is the later. Should the call-in be withdrawn, the matter may be withdrawn from the agenda for the Planning Committee and the application thereafter determined by the Appointed Officer.

Significantly contrary

A proposed development is “significantly contrary to the development plan” if the departure concerned, in the judgement of the Corporate Director for Neighbourhood Services and Infrastructure, is directly related to the achievement of the core objectives of any element of the development plan and the approval of the application would seriously compromise the achievement of the development plan’s objectives and compromise its other policies and proposals. For the avoidance of doubt a proposal will not necessarily be significant if, for example, it fails to meet the terms of one or more policies or one or more of the criteria in any criteria based policy.

Provisions

The Appointed Officer can refer any application to Planning Committee.

Valid representation

A valid representation (letter or statement) shall require to meet the following criteria:

- Be in the form of a signed and dated letter or statement or an e-mail indicating the name and postal address of the sender specifically indicating an objection to the application concerned. The letter/statement shall bear a legible name of the signatory and the signatory's address.
- Be received by the Council before the expiry of any statutory notification or publication period or, where no such period exists, within 21 days of publication of the weekly list, whichever is the later.
- Where more than one letter/statement of representation per household is received this shall be defined as the Council having received one letter/statement.
- Where a letter or petition is received which is signed by more than one person, each signatory must provide a valid postal address, otherwise they will not be considered as a valid representation.
- For the avoidance of doubt pre-printed letters or cards which are not individually addressed and signed will not be entertained as valid and acknowledged as such. Photocopied standard template letters will be valid as long as they are signed and dated and bear the postal address of the sender.
- To be valid a representation must contain matters which relate to the application involved and raise matters material in planning terms to the application concerned.
- The content of invalid letters/statements will not be referred to in Corporate Director's reports and similarly non-material matters referred to in valid letters of representation will not be referred to or taken into account in the determination of the application.
- The Corporate Director for Neighbourhood Services and Infrastructure shall, in cases of doubt, determine whether an objection or other representation is valid or timeous.

Appendix 1: Delegated Powers – Development Management

<p>Development Management.</p>
<p>To determine all planning applications, with the exception of the following:</p> <ul style="list-style-type: none"> • Any planning application which is deemed as a “national development” or a “major development”. • Any planning application which is significantly contrary to the Local Development Plan and recommended for approval. • Any planning application which attracts an objection, which meets the terms of a valid representation, and recommended for approval (see Note 1 below). • Any planning application which is subject to an Environmental Impact Assessment. • Where notice has been given to the Appointed Officer by two or more elected members of the Council that they require the planning application to be referred to the Planning Committee for determination (see Note 2 below). • Any planning application made by or on behalf of the following, including their spouse/partner: <ul style="list-style-type: none"> ○ An Elected Member of the Council. ○ A member of staff employed within the Planning Service (Development Management or Development and Marine Planning). ○ A member of staff routinely servicing the Planning Committee, including the Clerk to the Committee and the Legal Adviser. ○ The Chief Executive or any other Chief Officer.
<p>Note 1.</p> <p>Should the objection be withdrawn, the matter may be withdrawn from the agenda for the Planning Committee and the application thereafter determined by the Appointed Officer.</p>
<p>Note 2.</p> <p>The member call-in should be made before the expiry of any statutory notification or publication period or, where no such period exists, within 21 days of publication of the weekly list, whichever is the later.</p> <p>Should the call-in be withdrawn, the matter may be withdrawn from the agenda for the Planning Committee and the application thereafter determined by the Appointed Officer.</p>
<p>To determine applications for advertisement consent.</p>
<p>To determine applications for tree works, including trees protected by Tree Preservation Orders.</p>
<p>To determine applications for High Hedge Notices.</p>
<p>To determine applications for Listed Building Consent or Conservation Area Consent, except for applications which attract an objection, which meets the terms of a valid representation, and are recommended for approval.</p>
<p>To determine applications for Hazardous Substances Consent.</p>
<p>To determine applications for prior approval and administer prior notification submitted under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended).</p>

To determine requests for non-material variation of planning applications in terms of Section 64 of the Town and Country Planning (Scotland) Act 1997 (as amended).
In accordance with the applicable Environmental Impact Assessment (EIA) Regulations, to adopt a screening opinion as to whether a proposed development would require an Environmental Impact Assessment, and to adopt a scoping opinion as to the scope of environmental information to be submitted with an Environmental Impact Assessment.
To carry out Habitats Regulations Appraisals and, where any plan or project will have a likely significant effect on a European site, carry out an Appropriate Assessment.
To process, administer and defend planning and related appeals to Scottish Ministers, either by written representation, hearing or Inquiry sessions.
To fulfil functions of the Council in terms of the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
To determine applications made under Regulation 62 of the Conservation (Natural Habitats, &c.) Regulations 1994.
To determine applications for Modifications or Discharge of Planning Obligations.
To determine whether to issue, or refuse to issue, certificates of lawfulness of existing and/or proposed use or development.
To decline to determine an application in terms of Section 39 of the Town and Country Planning (Scotland) Act 1997 (as amended).
To make an order to revoke or modify planning permission, except where the owner, lessee or occupier of the land affected, or such other person who, in the opinion of the Appointed Officer, will be affected by the order, has objected to the order.

Appendix 2: Delegated Powers – Planning Enforcement

To issue the undernoted notices and orders:

- Enforcement Notice.
- Listed Building Enforcement Notice.
- Advertisement Enforcement Notice.
- Section 33A Notice (requiring an application for planning permission for development already carried out).
- Breach of Condition Notice.
- Stop Notice.
- Completion Notice.
- Building Preservation Notice.
- Discontinuance Order.
- Hazardous Substances Contravention Notice.
- Temporary Stop Notice.
- Fixed Penalty Notice.
- Amenity Notice (Section 179 Notice).
- Planning Contravention Notice (to obtain information about activities on land where a breach of planning control is suspected).
- Section 272 Notice (to obtain information on interests in land and the use of land).

To enter land, to take direct action required by a notice, and attempt to recover costs reasonably incurred in so doing.

To authorise any person to enter land without a warrant in the circumstances specified by the Town and Country Planning (Scotland) Act 1997 as amended.

To determine (1) whether or not there has been a breach of planning control and (2) having regard to the provisions of the Development Plan and to any other material considerations, that it is not expedient to take action and/or issue a notice.