

Scrutiny Committee – 13th November 2007

9. Review of the Development Control ** System - Referral of Applications to Regulation Committee

Corporate Director: Mark Pollock, Economic Vitality
 Head of Service: Simon Gale, Head of Development & Building Control
 Lead Officer: Simon Gale, Head of Development & Building Control
 Contact Details: Simon.gale@southsomerset.gov.uk or (01935) 462071

Purpose of the Report

To seek Members views on the present arrangements for the referral of applications to Regulation Committee

Action Required

That members of the Scrutiny Committee consider this report alongside the response of District Executive on 4th October (Minutes attached at Appendix A to this report) and comment on the following specific recommendations:

1. That the Council Continues to operate a ** referral system for applications to be forwarded to the Regulation Committee.
2. That minor changes are made to the criteria for referral to Regulation Committee.

Background

Concern has been raised over the last 18 months with regards to the operation of the ** referral system and whether it is still fit for purpose. As such an in depth review of all applications reported to Regulation Committee since January 2001. This review has revealed the following results:

Year	No. of referrals to the Regulation Committee	Did Regulation Committee agree with Officer or Area Committee?			Officer Recommendation	
		Officer	Area	Withdrawn	Approve	Refuse
2001-2002	30	17	13		8	22
2003	14	7	7		3	11
2004	30	15	14	1	9	21
2005	6	3	3		1	5
2006	9	5	3	1	6	3
Totals	89	47	40	2	27	62

It is evident from this table that a significant percentage (69%) of the applications referred to Regulation Committee are ones where the Officer is recommending refusal and Members wish to approve the application. The research has also shown over half of the applications that were referred to Regulation Committee were applications for single residential units. It is therefore apparent that the predominant role of the Regulation Committee over the last 5 years has been to consider unjustified dwellings outside of development limits.

The following table highlights how the number of referrals to Regulation Committee by each Area Committee:

Area Committee	No. of referrals to the Regulation Committee (since 2001)	Area Committee	No. of referrals to the Regulation Committee (since 2005)
East	44	East	5
North	12	North	3
South	14	South	1
West	19	West	6

It is evident based on the more historical data, that there is an inconsistency in the number of applications referred to Regulation Committee by Area East compared to the other Areas, although this appears to have balanced itself out over recent times.

There could be numerous reasons for any inconsistencies, ranging from the standard of officer advice, the way in which a particular Area Committee approaches applications and the type of applications that might have been submitted in that area. However, what an element of inconsistency does reinforce is the benefit of having a Regulation Committee to filter in a consistent district wide approach to planning decision-making.

The following table summarises the key issues surrounding the ** system:

Benefits	Disadvantages
Ensures consistency of decision making across the district	Takes away 100% area decision making, and can make some ward members feel alienated. May also encourage less responsible decision making at the Area Committee
Allows for a second opportunity for complex and contentious arguments and issues to be considered	Members feel that some officers are getting a 'second bite at the cherry'
Manages the risk of the Council being exposed to an award of costs at appeal	** can help appellants with their argument of unreasonableness
Allows everyone to know how the decision making progress beforehand	** predetermines that Members will go against officers

The following table shows the ** as adopted in the Council's Constitution. A number of suggested changes are highlighted, and then subsequently explained.

Scheme of Delegation Reference of Planning Applications to the Regulation Committee for Determination

The referral of planning applications to the Regulation Committee is only necessary in the following cases:

- (A) Applications which the Area Committee wishes to approve which would constitute a significant departure from Structure or Local Plans or other approved planning policies:

These will usually fall within the following categories.

Outside Defined Limits of Development

- New industrial, commercial or general purpose residential development in open countryside without a planning justification
- Agricultural dwellings, including mobile homes, ~~without ADAS support~~ and other dwellings for which special need is unsubstantiated.
- New dwellings within small settlements without development limits other than infilling by single dwellings which would not cause demonstrable harm without a planning justification-
~~Proposals affecting a classified road to which the Highway Authority is firmly opposed-~~

Inside Defined Limits of Development

Applications involving substantial change in the use of land or buildings where planning policies do not provide for such change e.g. shopping, industrial or commercial proposals or the loss of employment land or open space.

Anywhere

- Significant proposals which would, in the opinion of the Head of Development & Building Control, be substantially damaging to the character of a listed building or a conservation area.
 - Significant proposals which would conflict with a relevant previous decision, made ~~within the last five years.~~ Since the adoption of the Local Plan (unless there are sound planning reasons to do so)
 - Any other proposal where planning permission would set a precedent which would significantly undermine the Council's planning policy ~~decision.~~ On a district wide basis.
- (B) Applications which an Area Committee wishes to refuse, where, in the opinion of the Head of Development & Building Control, the proposed grounds for refusal would be difficult to substantiate - *unless the Area Committee is prepared to meet any costs arising from such a refusal from their Area Budget.*
- (C) Applications which have significance, or interest, throughout the District, or a substantial part of it, or which affect more than one Area Committee.

*The inclusion of asterisks ** as part of the Head of Development & Building Control's recommendation indicates that the application will need to be referred to the Regulation Committee if the Area Committee is unwilling to accept ~~that the officer~~ recommendation. ~~Only exceptionally, and in unforeseen circumstances, will it be necessary for the Area Committee to refer other applications. It is often the reason for refusal that may put the Council at risk of award of costs rather than the fact that Members wish to go against~~*

officer recommendation in itself. As such there should be a mechanism for the Lead Planning Officer at the Committee in consultation with the Chair and Solicitor be able to recommend that an application should be referred to Regulation Committee even if it has not been**.

Note: Where the Head of Development & Building Control is unsure of the 'significance' of a proposal, in policy terms, guidance will be sought from Head of Economic Development, Planning & Transport, and the Chairman or Vice-Chairman of the appropriate Area Committee

In terms of application 'Outside Development Limits' the caveat 'without planning justification' is recommended in order that the scheme does not become overly constraining. Reference to 'ADAS support' has been deleted, as it is more important that Agricultural experts evidence the proposal rather than being limited to ADAS. Reference to decisions contrary to the County Highway Authority has been deleted, as firstly, it is irrelevant whether or not the safety issue is within development limits or not, and secondly there is no reason why an Area Committee cannot properly consider the issue of public safety.

The criteria of inconsistent decisions within 5 years has been amended to reflect the adoption of the local plan, as this would allow for conflicting decisions to be made if the relevant planning policy had changed with the adoption of the plan.

The final change is self-explanatory.

Conclusions

There were only 15 applications reported to the Regulation Committee during 2005 and 2006. Set against the background of 3,500 applications per year, the number being reported is relatively insignificant. As such there is no overwhelming evidence to suggest any fundamental change to the principle of the scheme.

However, in order to ensure that the scheme remains fit for purpose a number of minor changes to the mechanism for referring applications to the Regulation Committee have been recommended.
