

Trafford Council's Officer Scheme of Delegation and the Identification of Non-Designated Heritage Assets

The Appellant has challenged the authority of officers to identify a building or site as a Non-Designated Heritage Asset (NDHA) when they determine a planning application under delegated powers. They consider that because the Scheme of Delegation does not specify that officers have this power, they do not have the delegated authority to do so. This is incorrect.

Trafford's Scheme of Delegation

The Council's Scheme of Delegation is at Core Document A65. It forms part of the Council's Constitution, and has been adopted by Full Council. On page 63 the left hand column is titled 'Who is Responsible' and the right hand column is titled 'Function'. This applies all the way through the remainder of the document. Planning and Development Management functions begin on page 75 in Part G. Page 79 at 3.2 'Determination of Planning Applications' sets out the wide ranging delegated powers conferred to the Corporate Director of Place; the Director of Growth and Regulatory Services; or the Head of Planning and Development.

*'to determine **all** planning applications **except** for those falling under the provisions in 1 (b) 'applications to be determined by committee' (emphasis added).*

The Place Directorate Officer Scheme of Delegation then further delegates these powers to officers in the Planning and Development Service below the Head of Planning and Development.

Applications to be determined by Committee are set out at 1b) on page 76 of the Scheme of Delegation and are (in summary):

- Applications where there have been six or more representations contrary to the officer recommendation;
- Applications which have been called in by a Member;
- Material departures from the development plan which officers are minded to approve;
- Applications where a Member or Officer has declared an interest (with the exception of some householder applications);
- Applications for development by or on behalf of the Council with one or more objections.

This is a closed list and the only other means by which applications are referred to Planning Committee is at the discretion of the Head of Planning and Development (effectively by choosing not to exercise her delegated powers).

The scheme of delegation does not list any of the individual considerations which might be material in the determination of a planning application and specify whether these are matters

which should be determined by Planning Committee or by officers. This could never be a comprehensive list given the extremely wide range of issues which may be material.

Identifying Non-Designated Heritage Assets

Annex 2: Glossary of the NPPF set out the following definition of heritage assets:

Heritage asset: A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and **assets identified by the local planning authority** (including local listing).

The NPPG (Paragraph 040 Reference ID: 18a-040-20190723) states:-

'In some cases, local planning authorities may also identify non-designated heritage assets as part of the decision-making process on planning applications, for example, following archaeological investigations'.

This is further supplemented by Historic England Advice Note 7 which sets out in paragraph 19 that non-designated heritage assets can be identified during the decision making process on planning applications.

Although the adoption of local lists is encouraged by the NPPG and Historic England, there is no suggestion in any of the guidance that where a local list is being prepared or is adopted that there is no other means by which a NDHA can be identified or that it prevents a LPA identifying NDHAs through the planning application process. Identifying NDHAs through the planning application process is comparable to the 'spot-listing' process where individual buildings of potential heritage significance can be put forward for statutory listing at the point their significance is identified.

The determination of the application at 35 Oakfield

Trafford's Scheme of Delegation does not identify NDHAs (or indeed any other specific material consideration) as a trigger for a referral to Planning Committee.

The application at 35 Oakfield did not fall into any of the categories of planning application that are required to be determined by the Planning Committee. It was therefore delegated to officers to determine.

The NPPG specifically identifies that NDHAs may be determined during the planning application process. It does not preclude this where a local list is under preparation or is adopted.

Thus the determination of the 35 Oakfield application, including the identification of 35 Oakfield as a NDHA under officers' delegated powers was procedurally correct.