

# APPENDIX T

## WAVERLEY BOROUGH COUNCIL

### CONSTITUTION SPECIAL INTEREST GROUP - 19 JUNE 2008

#### REPORT TO THE MEETING OF EXECUTIVE - 8 JULY 2008

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##### A. CONFIRMATION OF CHAIRMAN

In accordance with the Special Interest Group Protocol, Cllr R J Gates as Leader of the Council was confirmed as Chairman.

##### B. APOLOGIES FOR ABSENCE

An apology for absence had been received from Cllr Mrs G M Beel.

##### C. DISCLOSURE OF INTERESTS

There were no disclosures of interests.

##### D. PROPOSED UPDATES TO WAVERLEY'S CONSTITUTION

Agenda Item 4, Appendix A)

D.1 The Chairman reminded the SIG that its role was to ensure that the Constitution correctly codified Council policy. The SIG did not have the power to change Council policy, although it could make observations to the Executive if it was felt that a policy needed to be reviewed.

D.2 It was noted that only the full Council would be able to agree changes to the Constitution. There was some concern that recommendations to change the Constitution should be considered by the appropriate Overview & Scrutiny committee. However, on balance, the SIG felt that the purpose of the overview and scrutiny process was to provide a check on the Executive. As the Council had to make any decision to change the Constitution, there was a general reluctance to have the same business discussed in more meetings than absolutely necessary.

D.3 The SIG considered the various planning issues that had been highlighted in the report:

The role of individual Councillors in asking for Officer-delegated decisions to be referred to Committees.

It was noted that for any planning applications that might be decided by Officers under delegated authority, the current *convention* was that a Ward Member could ask the Head of Planning for such an application to be brought before a Committee. However, a Town/Parish Council in agreement with the respective Ward member had a *right* to require an application to be referred to a Committee rather than decided under delegation.

- Some SIG members were uncomfortable with the anomaly between the rights of individual Members and those of a Member acting with the agreement of a Town/Parish Council.
- There was concern that unwritten conventions should be codified to clarify them and make them widely known and understood. It was agreed it was desirable that the convention that a Member might ask the Head of Planning to refer an application to Committee should be codified in the Constitution.
- There was concern that a large part of the scheme of delegation for planning matters should not become conditional, which would be the case if a Ward Member had the right to refer an application to Committee.
- It was noted that a Ward Member and Town/Parish Council acting together currently did not need to give a planning reason for exercising their right to refer an application to Committee.
- There was concern that if a Ward Member had an individual right to refer applications without giving a planning reason, they could come under considerable pressure from constituents to do so. Having to make the request via the Head of Planning provided the opportunity for the planning issues to be discussed. Anecdotally, it was felt that if a Ward Member requested that an application should go to Committee, then Planning Officers normally were able to oblige. It was felt that the professional code of conduct of the planning officers would be sufficient to prevent any deliberate attempt to obstruct Members.

D.4 Whilst the SIG had a range of views on whether or not a Ward Member should have a right to refer an application to a Committee, it was agreed to RECOMMEND to the EXECUTIVE and then the Council that the Scheme of Delegation should be amended as follows (amended text shown in italics):

#### AREA PLANNING COMMITTEES

It was agreed by Council (25th October and 13th December 2005) that delegated items shown below which are emboldened (also marked with an asterisk) may be subject to reference to an Area Planning Committee.

- (a) *With Town or Parish Support*  
 Where within three weeks following the notification of the Waverley Weekly List of Planning Applications, a Ward Councillor (for the Ward including *all or part of* the planning application site) makes a request to that effect, supported in writing by the relevant Town or Parish Council, the application

will be placed on the agenda for the next appropriate Area Planning Committee. This is provided that the Town or Parish Clerk has written to confirm that the Town or Parish Council has recommended it to the Ward Councillor for consideration by an Area Planning Committee of Waverley Borough Council.

- (b) Member proposal to refer an application  
*Where within three weeks following the notification of the Waverley Weekly List of Planning Applications, a Ward Councillor (for the Ward including all or part of the planning application site) requests that an item be referred to a committee, and puts forward matters that are relevant planning grounds, officers will normally not exercise their delegated powers and instead submit the application to the appropriate committee.*

#### D.5 Tree Preservation Orders

The SIG noted that currently Tree Preservation Orders were made by Officers under delegated authority. There was concern that by involving a Ward Member before making a TPO, any delay might allow landowners opportunity to cause irreversible damage to any tree in question. Ward members were involved via the Area Planning Committees if the landowners appealed the decision.

- D.6 The SIG felt that there might be an issue related to Officers' refusal of applications to lop/top/fell Protected trees. It was agreed that further information was required before any observations or recommendations could be made about amending the Scheme of Delegation.

#### D.7 Enforcement Action

The SIG agreed that there was scope for further improvement in liaison with Enforcement Team, and Ward Members had been invited to contact the Principal Enforcement Officer to make arrangements for briefings on relevant cases, but did not feel the scheme of delegation should be amended.

#### D.8 Public Question Time on Individual Planning Applications

The SIG was concerned that the Council should not be perceived to be trying to limit the rights of objectors to sensitive applications at this time. It was suggested that there should be no change to the public question arrangements for the time being, but it could be that the answer to any such question was that it was not appropriate to comment on a current planning application.

D.9 Area Planning Committees – Applications Crossing Area Committee Boundaries

The SIG noted that whilst members of one Area Committee could attend and speak (under existing Council Procedure Rule 23) at a meeting of another Area Planning Committee, they were unable to take part in the decision-making.

D.10 The SIG was not in favour of creating a 3-tier system, with *ad hoc* joint planning committees of various combinations of two Area Planning Committees. It was felt that it was more appropriate to more frequently use the existing Joint Planning Committee to consider items that affected more than one area planning committee.

D.11 Licensing Issues

The SIG noted the quasi-judicial nature of licensing hearings and the potential difficulty caused if non-licensing Members attended to speak under Council Procedure Rule 23, and were perceived to have influenced the Hearing decision. It was noted that if a Member had made a written representation, they would be able to speak, having given due notice to all interested parties.

D.12 There was some reluctance to recommend excluding any meeting of a Licensing Sub-Committee from Members' right to speak. It was agreed that some research should be done into the procedures for magistrates court hearings, to establish what protections were put in place in the past to ensure proceedings were fair and unbiased.

D.13 Special Interest Groups Protocol

The SIG agreed to RECOMMEND to the EXECUTIVE that the wording of the Special Interest Groups Protocol be amended as follows:

“5. Membership of SIGs ... by the appropriate Portfolio Holder. The appropriate Portfolio Holder will convene and normally chair a SIG, ~~but may delegate the chairmanship at his/her discretion~~ unless they choose to delegate the Chairmanship. Substitutes are not permitted.”

D.14 Urgent Business

The SIG noted that there had been issues regarding the way the Council dealt with 'to follow' papers, relating to items on an agenda but circulated after the agenda despatch. This was a different situation to one where an item of business arose as a matter of urgency after an agenda had been dispatched. In this case the item could be added to the agenda and taken as urgent business at a committee, with the reasons for the urgency stated in the minutes; or an emergency meeting of the committee could be convened to meet the 5-day rule for publication of papers: or the business could be dealt with by the Chief Executive under delegated authority.

D.15 The SIG considered that generally this was not a major problem, although there had been a recent problem in relation to additional papers for a Technical Briefing for the Joint Planning Committee. It was suggested that consideration might be given to re-classifying such Technical Briefings as less formal Member Briefings so that the strict Access to Information rules need not apply.

D.16 Overview & Scrutiny Call-in deadlines

The SIG noted that the purpose of the deadlines for call-in of items by O&S committees was to prevent the overview and scrutiny process deliberately obstructing the implementation of Executive decisions. The SIG wanted to reflect on this matter and in the meantime did not recommend that any changes should be made.

D.18 Code of Corporate Governance

The SIG agreed that the Standards Committee should be able to refer matters relating to the Code of Corporate Governance to the SIG for consideration if it felt it appropriate to do so.

E. DATE OF NEXT MEETING

To be arranged when necessary.

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**Present at the meeting:**

Members:

Cllr V Duckett  
Cllr R J Gates (Chairman)  
Cllr S N Mulliner  
Cllr K T Reed  
Cllr Mrs N Warner-O'Neill  
Cllr J A Ward

Officers:

Mary Orton  
Mark Hill  
Emma McQuillan  
Robin Pellow

The meeting commenced at 15.00 and finished at 17.00.