

WAVERLEY BOROUGH COUNCIL

MINUTES OF THE EXECUTIVE - 4 APRIL 2017

SUBMITTED TO THE COUNCIL MEETING -25 APRIL 2017

(To be read in conjunction with the Agenda for the Meeting)

Present

Cllr Julia Potts (Chairman)	Cllr Kevin Deanus
Cllr Tom Martin (Vice Chairman)	Cllr Jim Edwards
Cllr Brian Adams	Cllr Jenny Else
Cllr Andrew Bolton	Cllr Carole King

Apologies

Cllr Ged Hall

Also Present

Councillor Patricia Ellis, Councillor Michael Goodridge MBE, Councillor John Gray, Councillor Jerry Hyman, Councillor Peter Isherwood and Councillor John Williamson

162. MINUTES (Agenda item 1)

The Minutes of the Meeting held on 7 March 2017 were confirmed and signed as a correct record.

163. APOLOGIES FOR ABSENCE (Agenda item 2)

Apologies for absence were received from Councillor Ged Hall.

164. DECLARATIONS OF INTERESTS (Agenda item 3)

Councillors Andrew Bolton and Tom Martin declared non-pecuniary interests in item 17 as members of Godalming Town Council.

Councillor Kevin Deanus declared a non-pecuniary interest in item 9 as he considered to have sufficient weight so as to undermine his ability to make an open-minded and objective decision. Councillor Kevin Deanus left the room during consideration of this item.

PART I - RECOMMENDATIONS TO THE COUNCIL

Background Papers

Unless specified under an individual item, there are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to the reports in Part I of these minutes.

165. OVERVIEW AND SCRUTINY - CHANGES TO THE CONSTITUTION (Agenda item 6)

[NB Cllr Jerry Hyman attended the meeting and spoke on this item].

165.1 The Council meeting on 21 February 2017 gave approval to the new Overview and Scrutiny arrangements which would be coming into effect from the start of the 2017/18 Council year. The Constitution SIG met on 14 March and reviewed the amendments required to the Constitution and Procedure Rules to reflect the revised ways of working. These are set out at Annexe 1 (only extracts from the Constitution where changes are proposed have been included). In addition to the revised wording, there are also two proposed protocol documents which will form additional annexes:-

- i. Terms of Reference of the Co-ordinating Board (Annexe 1A)
- ii. Protocol for Informal Working Groups (Annexe 1B)

165.2 Once the amendments to the Constitution have been adopted, the various documents will be formatted and published in accordance with the Council's brand guidelines.

165.3 The Executive now

RECOMMENDS that

131. the amendments to the Constitution be approved, to include the addition of the Terms of Reference of the Overview and Scrutiny Co-ordinating Board and the Protocol for Informal Working Groups.

[Reason: To review the amendments that are required to the Constitution and Procedure Rules to reflect the revised ways of working for Overview and Scrutiny Committees.]

166. REVIEW OF SCHEME OF DELEGATION (Agenda item 7)

[NB Cllr Jerry Hyman attended the meeting and spoke on this item].

166.1 The Scheme of Delegation to officers has been in existence for many years and has been added to and amended in an ad hoc manner, usually to reflect new or changing legislation. Despite these many revisions, the scheme has never been subject to a complete overhaul.

166.2 The current scheme, because it is detailed and specific, requires constant revision to keep it up to date and inevitably there are gaps in provision where it does not always cover every eventuality.

166.3 With the increasing speed of change, both external and internal, the Strategic Review identified a need for a flexible, generic and user-friendly Scheme of Delegation that can meet the needs of a modern local authority. As a result, the Scheme of Delegation has been re-written with a view to achieving these aims.

166.4 As the approach to the new scheme is very different to the existing scheme, it is not possible to show tracked changes to the original

document. However, an audit trail of the migration of the existing delegations into the new scheme will be maintained for members to view.

166.5 Officers took a report to the Executive on 7 February 2017 setting out the principles of the review, recommending that the revised constitution and scheme of delegation should:

- Be shorter
- Be simpler
- Be easier to understand
- Facilitate quicker decision-making
- More easily accommodate future national legislative and local policy changes without always necessitating the addition of further specific points
- At least increase and not at all decrease the quality, integrity, accountability, transparency of the Council's democratic processes.
- Be endorsed by both officers and members.

166.6 In order to identify the best way forward for Waverley, officers undertook research into the format of the Schemes of Delegation at other and neighbouring authorities and whether they had recently undertaken any form of review.

166.7 As a result of the findings, officers all agreed that the scheme recently introduced at Surrey Heath was consistent with the approach that was trying to be achieved at Waverley, and largely the proposed scheme set out at Annexe 2, reflects that of Surrey Heath. Having spoken to their Democratic Services Manager, feedback on the transition to a revised scheme and its operation was positive from both the officer and member perspective, recognising the culture change that was needed. In the two years since it has been operating, the new scheme has been reported to be working much more effectively than the old style scheme, particularly in relation to Planning and Licensing matters.

166.8 The new approach to the Scheme provides for:

- i. the migration of delegations from outdated function area headings, to the Statutory Officers and service areas to make the scheme more accessible;
- ii. many of the delegations will be dealt with on an exceptions basis, with officers authorised to take all actions relating to a function with the exception of certain decisions that are reserved to a specific Committee or the Council;
- iii. the removal of day to day management and administrative actions to include only actual decisions to be taken; and
- iv. the removal of outdated and redundant delegations and where legislation has been superseded.

- 166.9 There have been some areas identified which have in the past incurred an unnecessary delay in decision-making and it was hoped that the revised Scheme of Delegation would be able to address these. In fact, as a result of checking the constitutional requirements, no specific action is required:-

i. Planning Applications for Council-Owned Property

In the event that a service area of Waverley Borough Council wishes to take action relating to Council-owned land, property or premises that requires planning permission, historically common practice has been that approval to submit a planning application has been sought by a report to the Executive. However, there is no requirement to do this and so in future, officers can proceed with submitting planning applications without the need to seek Executive approval to do so.

ii. Financial Virements

There is often uncertainty about the procedure to be followed when wishing to vire money between budgets. However, the Financial Regulations already set out both the procedure and the financial levels for officers to take action in terms of budget virements, and again officers can operate with more flexibility than they have perhaps been aware of in the past.

In view of the need for the Financial Regulations to be consistent with the provisions of the Scheme of Delegation, it is proposed that the Strategic Director – Finance and Resources, be authorised to review the Financial Regulations and ensure their consistency with new principles agreed by the Council on 21 February 2017 and within this report. Similarly, the Contract Procedure Rules are also in the process of being reviewed and updated, and it is essential that these three constitutional documents are all cross-referenced.

- 166.10 The Constitution SIG met on 14 March 2017 to give consideration to the proposed Scheme of Delegation and was supportive, recognising that it was the right approach to take in order to underpin an efficient system where decisions are taken quickly. It was, however, noted that safeguards for operating such a scheme were important, and officers gave assurances that the scheme still allowed for matters to be referred to the Council, Executive and Committees at the request of officers or councillors, if appropriate. Identifying that the new way of working would bring with it additional responsibility for officers, the need for awareness raising and training was emphasised, in order to ensure the cultural change of the organisation could be driven forward effectively. Improved communication with ward councillors and portfolio holders in advance of decisions being taken would be fundamental to reassure councillors and address any issues of transparency.

166.11 The Executive, on 4 April 2017, delegated authority to the Head of Policy and Governance, in consultation with the Leader of the Council and any relevant Portfolio Holder(s) or Head(s) of Service, to make any final amendments necessary to the Scheme in advance of it being presented to the Council for approval. The additional points relating to the Head of Housing Operations and the Head of Strategic Housing and Delivery which were tabled at the Executive, have now been incorporated into Annexe 2, as have some final additions.

166.12 The Executive now

RECOMMENDS that

132. the revised Scheme of Delegation to officers as set out at Annexe 2, be adopted;

133. the Strategic Director for Finance and Resources be authorised to amend the Financial Regulations and Contract Procedure Rules to bring them into line with the new Scheme of Delegation; and

134. a review of the effectiveness of the new Scheme be undertaken after 12 months of operation, or earlier if required, and any adjustments necessary be recommended to the Council at that time.

[Reason: To consider a revised Scheme of Delegation to officers in respect of the functions of the Council.]

167. AMENDMENT TO THE CONSTITUTION AND SCHEME OF DELEGATION
(Agenda item 8)

167.1 The Constitution and Scheme of Delegation is kept under regular review and this report brings to the attention of the Council that the Constitution and Scheme of Delegation requires amendment. The proposed amendment will provide the addition of a key delegation in the Planning Service, specifically in relation to planning enforcement.

167.2 The Scheme of Delegation allows for the Head of Planning, after consultation with the Borough Solicitor, to determine planning applications where there is a requirement for a planning obligation (Section 106 agreement). This delegation only exists when no positive obligations are placed on the Council save for contributions required to offset planning harm to the Thames Basin Heath Special Protection Area (July 2016 version: Delegation 98).

167.3 The Scheme also allows for the Head of Planning to vary a legal agreement provided no positive obligations are placed on the Council and to discharge a legal agreement where there is no longer a valid planning purpose for the agreement (July 2016 version: Delegations 99/100).

167.4 It has come to the attention of Planning Enforcement and legal officers that no such authority in the Scheme allows for the enforcement of a

planning obligation. This is a crucial omission given that the Town and Country Planning Act 1990 (as amended) provides a statutory power for the Council to enforce planning obligations as and when necessary:

“106 Planning obligations.

(1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A and 106B as “a planning obligation”), enforceable to the extent mentioned in subsection (3)—

...

(3) Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection (9)(d)—
(a) against the person entering into the obligation; and
(b) against any person deriving title from that person

...

(5) A restriction or requirement imposed under a planning obligation is enforceable by injunction.

167.5 The Scheme of Delegation authorises the Borough Solicitor to seek injunctions upon the request of the Head of Planning but only in very specific situations. These are contained at Delegations 84 and 85 of the July 2016 version. Specifically named are actual and/or apprehended breaches of planning control for unauthorised development; listed building or conservation area control; hazard substances control; and protected trees control. Nowhere is the equivalent authorisation found for enforcing a planning obligation via section 106(5) of the Town and Country Planning Act 1990.

167.6 Planning Enforcement and legal officers are mindful, given the volume of planning obligations and the associated requirements contained in such agreements, that, going forward, a delegation is required. This shall allow for sound section 106 management and monitoring and effective and expedient enforcement.

167.7 The Scheme of Delegation allows for effective decision-making to be taken by the named officers. However, the delegations must arise from the authorising provisions from within the Council’s Constitution.

167.8 Part 3 of the Council’s Constitution “Responsibility for Functions” details what business is reserved to Full Council, the Executive or other committees of the Council. It is here “Joint Planning Committee” (“JPC”) is created with 23 councillors appointed. Its functions are highlighted as being “relevant functions relating to town and country planning and development control as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities)(Amendment No2)(England) Regulations.” These Regulations are silent about the enforcement of planning obligations via an injunction. Other powers of JPC are then also listed ranging from powers to determine planning applications, through to powers to issue various notices for enforcement purposes. Here the power to “enter into or vary or discharge agreements relating to development or use of land” is a function of the JPC and exercised via delegations to the

four Area Planning Committees (“APC”) and the Scheme of Delegation to officers.

- 167.9 Again, the power to enforce a planning agreement pursuant to the statutory provisions of section 106(5) of the Act is omitted. As such, JPC is devoid of any ability to allow the enforcement of a planning obligation and, by extension, the Council.
- 167.10 To allow for the effective enforcement of planning obligations, the amendments proposed are required. Should the Council give approval to the new Scheme of Delegation to Officers at Minute No. 166, the second recommendation will fall away because the delegation will no longer be required under the new Scheme.
- 167.11 The Executive now

RECOMMENDS that

135. To insert into the Constitution at Part 3 and into the table of functions for the Joint Planning Committee at the row “Power to enter into or vary or discharge agreements relating to development or use of land” the following underlined addition: “Power to enter into or vary or discharge agreements relating to development or use of land. Including the enforcement of a restriction or requirement imposed by an agreement”; and

136. To insert into the Scheme of Delegation a new “100A” and the authority as follows: “Authority to seek injunctions pursuant to section 106(5) of the Town and Country Planning Act 1990 (or as may be amended, modified or re-enacted) in respect of actual or apprehended breaches of a restriction or requirement imposed by an agreement.”

[Reason: To seek an amendment to the Council’s Constitution and the current Scheme of Delegation to officers in respect of planning enforcement related matters]

168. CALL-IN OF DUNSFOLD PARK PLANNING APPLICATION - REQUEST FOR SUPPLEMENTARY ESTIMATE (Agenda item 9)

[NB Cllr Jerry Hyman attended the meeting and spoke on this item].

- 168.1 On 14 December 2016, under WA/2015/2395, the Joint Planning Committee resolved to grant planning permission, in outline, for a new settlement comprising 1,800 dwellings; care accommodation; a local centre for retail, financial and professional, cafes/restaurant/takeaway and/or public house uses; new business uses for offices, research and development industry, light and general industry, storage and distribution and flexible commercial space; health centre; relocation of Jigsaw School; new community centre; two-form entry primary school; open space including water bodies, outdoor sports, recreational facilities, a canal basin and nature conservation areas; public transport routes, footpaths and

cycleways; landscaping, removal of three runways; and all related infrastructure.

- 168.2 Under the same planning application, there was a resolution to grant permission, in full, for the demolition of a certain number of buildings and the retention of others for specified uses and the temporary use of one building as construction headquarters.
- 168.3 On 8 March 2017, the Secretary of State called in the application for planning permission for his own determination. A Planning Inspector will hold a Local Inquiry and report their recommendation to the Secretary of State. The Planning Inspectorate will decide the date and location of the inquiry.
- 168.4 Advice received from the Planning Inspectorate so far is that the Secretary of State is particularly interested in matters relating to the location and the sustainability of the proposal. The Council will be informed if further matters are raised as being relevant by the Inspector.
- 168.5 In defending its position at the inquiry, the Council will require Counsel for advice during the preparation of the case and to represent the Council throughout the course of the Inquiry. Clearly, the Council will be in the strongest possible position with the benefit of a highly qualified and experienced planning barrister in place to robustly defend the Council's resolution to grant planning permission. It is likely that the inquiry will last in excess of a week.
- 168.6 As well as requiring a barrister, officers are proposing to employ the services of a private planning consultant to represent the Council throughout the inquiry in order to support the demand on staffing capacity that this major Public Inquiry will cause. In addition, it is considered that securing the services of a consultant with experience of high level and complex planning inquiries will be beneficial and appropriate to defend this important and strategically significant development.
- 168.7 The Executive now

RECOMMENDS that

- 137. a supplementary estimate of up to £200,000 be approved from the Revenue Reserve Fund, to meet the costs of the Council defending its resolution to grant planning permission for the proposal at Dunsfold Park following the Secretary of State call-in.**

[Reason: To request approval for a supplementary estimate to hold the inquiry and pay for legal representation, including Counsel and planning and/or technical consultants required in order to defend the Council's resolution to grant planning permission for the scheme]

PART II - MATTERS OF REPORT

The background papers relating to the following items are as set out in the reports included in the original agenda papers.

169. FORWARD PROGRAMME (Agenda item 5)

[NB Cllrs Jerry Hyman and Peter Isherwood attended the meeting and spoke on this item].

A late item was circulated setting out the conclusions of the Joint Negotiating Committee which had met the day before, recommending that the Executive approved the staff pay award of 1% for 2017. The budget provision for the pay award had already been agreed as part of the budget-setting process for 2017/18.

RESOLVED that

1. the Executive Forward Programme be approved; and
2. the staff pay award of 1% from 1 April 2017 be approved.

170. PERFORMANCE MANAGEMENT REPORT - QUARTER 3 - OCTOBER - DECEMBER 2016/17 (Agenda item 10)

RESOLVED that

1. inclusion of the following new statutory planning indicators for the new financial year 2017-2018 be endorsed:
 - *'Processing of planning applications: Non-major applications - % determined within 8 weeks'* (90% target / new statutory);
 - *'Non-major appeals allowed as a % of all non-major decisions made (cumulative)'* (10% target / statutory);
2. the inclusion of the following new local planning indicators and targets for the new financial year 2017-2018 be agreed:
 - *'Speed of processing for all other applications'* (90% target);
 - *'All other appeals (cumulative to date)'* (20% target);
3. the discontinuance of the following planning indicators be agreed:
 - *'Processing of planning applications: Minor applications - % determined within 8 weeks'* [NI 157b];
 - *'Processing of planning applications: Other applications - % determined within 8 weeks'* [NI 157c];
 - *'Planning appeals allowed (cumulative year to date)'* [P2];
4. the following target changes be agreed:
 - a) Amendment of the wording and criteria for the [F3] indicator to *'percentage of invoices paid within 30 days or within supplier payment terms'*.
 - b) Increasing the target for the responsive repairs overall service rating [H7] from 87% to 93% and to amend the wording of indicators H7, H8 and H9 to clearly specify that these scores reflect tenants' view of the service.
 - c) Reduction by 10% to the P3 indicator (*'Major planning appeals allowed as a % of Major Application decisions made (cumulative)'*).

d) Increase of the target from 92,000 to 105,000 for the number of visits for both Haslemere [CS4] and Godalming [CS6] Leisure Centres; and

5. the Overview and Scrutiny Committees be thanked for their observations and recommendations.

[Reason: To analyse the Council's performance in the third quarter of 2016/17 and consider potential changes to some of the indicators.]

171. DEVELOPING AN AIR QUALITY IMPROVEMENT FRAMEWORK FOR WAVERLEY (Agenda item 11)

[NB Cllr Jerry Hyman attended the meeting and spoke on this item].

RESOLVED that the following recommendations of the Community Overview and Scrutiny Committee be endorsed:

1. Waverley Borough Council establishes a multi-agency/stakeholder Air Quality Steering Group to contribute to the development of an Air Quality Strategy for Waverley and a refreshed Air Quality Action Plan, and to progress the measures in the Air Quality Action Plan thereafter;
2. Membership of the Waverley Air Quality Steering Group to follow the recommendations of LAQM.PG16 in terms of seniority of representation, as set out in paragraph 10, above; and to seek to involve Waverley's local Members of Parliament;
3. The Waverley Air Quality Steering Group should include scope to establish working groups that can engage with local stakeholders to monitor progress locally and develop practical solutions to address air quality issues;
4. The new Environment Overview & Scrutiny Committee to critically review the development of a new Waverley Air Quality Strategy and Air Quality Action Plan, informed by the contribution of the Air Quality Steering Group, and in line with the requirements of LAQM.TG16;
5. Waverley's Air Quality webpages to be updated and simplified, so that interested parties are able to find relevant information; and
6. The new Environment Overview & Scrutiny Committee to include in its rolling work programme the scrutiny of the Council's annual report to DEFRA (in accordance with whatever reporting regime is in place at the time).

[Reason: To consider recommendations from the Community Overview and Scrutiny Committee which were developed in response to the Committee's discussion of air quality issues in Waverley.]

172. HOUSING MAINTENANCE CONTRACTS RENEWAL (Agenda item 12)

[NB Cllrs Michael Goodridge, John Williamson and Jerry Hyman attended the meeting and spoke on this item].

RESOLVED that

1. the recommended approach to the future delivery of Waverley's housing maintenance services, as set out in Section 6 of (Exempt) Annexe 1 to the agenda report, be agreed;
2. authority be delegated to the Head of Housing Operations to
 - appoint consultants to provide advice and undertake such work as required to achieve the recommendations set out in the (Exempt) Annexe, within agreed budgets and in accordance with the Council's Contract Procedure Rules;
 - procure and appoint contractors for those services identified in the (Exempt) Annexe as requiring re-procurement, within agreed budgets and in accordance with the Council's Contract Procedure Rules and in consultation with the Portfolio Holder for Housing and the Strategic Director for Finance and Resources;
 - extend the contracts for those services identified in the (Exempt) Annexe as requiring extension; and
 - take all other reasonable actions in order to facilitate the recommendations identified within the (Exempt) Annexe; and
3. the Overview and Scrutiny Co-ordinating Board be asked to add the on-going monitoring of the procurement process to the Overview and Scrutiny work programme.

[Reason: To present the findings of the Corporate Overview and Scrutiny Housing Maintenance Contracts Renewal Sub-Committee which has carried out a review into the nine housing maintenance contracts held by Waverley Borough Council]

173. EXECUTIVE DIRECTOR'S ACTIONS (Agenda item 13)

There were no Executive Director Actions since the Executive had last met.

174. EXCLUSION OF PRESS AND PUBLIC (Agenda item 14)

At 7.38 pm it was

RESOLVED that, pursuant to Procedure Rule 20, and in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following items on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during these items, there would be disclosure to them of exempt information (as defined by Section 100I of the Act) of the description specified in paragraph 3 of the revised Part 1 of Schedule 12A to the Local Government Act 1972, namely:

Information relating to the financial or business affairs of any particular person (including the authority holding that information).

175. PROPERTY MATTER (Agenda item 15)

[NB Cllr Jerry Hyman attended the meeting and spoke on this item].

RESOLVED that the recommendation as set out in the (Exempt) Annexe to these minutes be agreed.

176. ROWLEY'S CENTRE FOR THE COMMUNITY (Agenda item 16)

[NB Cllrs Jerry Hyman and Patricia Ellis attended the meeting and spoke on this item].

RESOLVED that the recommendation as set out in the (Exempt) Annexe to these minutes be agreed.

177. GODALMING MUSEUM (Agenda item 17)

RESOLVED that the recommendation as set out in the (Exempt) Annexe to these minutes be agreed.

The meeting commenced at 6.45 pm and concluded at 8.35 pm

Chairman