

To: All Members of the STANDARDS
COMMITTEE
(Other Members for Information)

When calling please ask for:

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Policy and Governance

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Date: 21 June 2019

Membership of the Standards Committee

Cllr Brian Adams
Cllr Paul Follows
Cllr Michael Goodridge
Cllr John Gray

Cllr Jerry Hyman
Cllr Robert Knowles
Cllr Penny Marriott
Cllr Peter Marriott
Vacancy

Dear Councillors

A meeting of the STANDARDS COMMITTEE will be held as follows:

DATE: MONDAY, 1 JULY 2019

TIME: 5.00 PM

PLACE: COMMITTEE ROOM 1, COUNCIL OFFICES, THE BURYS,
GODALMING

The Agenda for the meeting is set out below.

Yours sincerely

ROBIN TAYLOR
Head of Policy and Governance

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NOTE FOR MEMBERS

Members are reminded that Contact Officers are shown in each report and members are welcome to raise questions, etc. in advance of the meeting with the appropriate officer.

AGENDA

1. **APPOINTMENT OF CHAIRMAN**

To appoint the Chairman of the Committee for the Council year 2019/20.

2. **APPOINTMENT OF VICE-CHAIRMAN**

To appoint the Vice-Chairman of the Committee for the Council year 2019/20.

3. **MINUTES**

To confirm the Minutes of the meeting which took place on 12 March 2019 (to be laid on the table 30 minutes before the meeting commences).

4. **APOLOGIES FOR ABSENCE**

To receive any apologies for absence.

5. **DISCLOSURES OF INTERESTS**

To receive from Members, declarations of interests in relation to any items included on the agenda for this meeting in accordance with the Waverley Code of Local Government Conduct.

6. **QUESTIONS BY MEMBERS OF THE PUBLIC**

The Chairman to respond to any written questions received from Members of the public in accordance with Procedure Rule 10.

The deadline for receipt of questions is Monday 24 June 2019.

7. **QUESTIONS FROM MEMBERS OF THE COUNCIL**

The Chairman to respond to any written questions received from Members in accordance with Procedure Rule 11.

The deadline for receipt of questions is The deadline for receipt of questions is Monday 24 June 2019.

CONSTITUTIONAL MATTERS

8. **CONSTITUTION AND SCHEME OF DELEGATION - PROPOSED AMENDMENTS** (Pages 5 - 18)

The Council's Constitution, including the Scheme of Delegation to Officers, sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent, and accountable to local people. The proposed amendments to the Constitution and Scheme of Delegation address specific issues that have arisen and which need to be effected immediately, and in advance of any changes that may be required as an outcome of the forthcoming governance review.

Recommendation

That the proposed amendments to the Constitution and Scheme of Delegation are endorsed and recommended to Council for approval.

9. **EXCLUSION OF PRESS AND PUBLIC**

If necessary, to consider the following recommendation on the motion of the Chairman:

Recommendation

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 item 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 the item, there would be disclosure to them of exempt information (as defined by Section 100I of the Act) of the description specified at the meeting in the revised Part 1 of Schedule 12A to the Local Government Act 1972.

**For further information or assistance, please telephone
Fiona Cameron, Democratic Services Manager & Deputy Monitoring
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fiona.cameron@waverley.gov.uk**

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WAVERLEY BOROUGH COUNCIL

STANDARDS COMMITTEE

1 JULY 2019

Title:

**CONSTITUTION AND SCHEME OF DELEGATION -
PROPOSED AMENDMENTS**

**[Portfolio Holder: Cllrs John Ward and Paul Follows]
[Wards Affected: All]**

Summary and purpose:

The Council's Constitution, including the Scheme of Delegation to Officers, sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent, and accountable to local people. The proposed amendments to the Constitution and Scheme of Delegation address specific issues that have arisen and which need to be effected immediately, and in advance of any changes that may be required as an outcome of the forthcoming governance review.

How this report relates to the Council's Corporate Priorities:

The Council's Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent, and accountable to local people. The Constitution supports delivery of the all the Council's corporate priorities on delivery of services, and ambitions for how the Council will work.

Equality and Diversity Implications:

There are no equality and diversity implications.

Financial Implications:

There are no direct finance implications arising from the report

Legal Implications:

Legal advice is set out in the body of the report.

1. Introduction

- 1.1 The Council's Constitution, including the Scheme of Delegation to Officers, sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent, and accountable to local people. From time to time, it is necessary to review and amend the Constitution in order to address specific issues that are not covered by the current constitution, or where further clarification is required.

2. Definition of the Principal Opposition Group

- 2.1 Following the recent Borough elections the Council is defined as being in No Overall Control, in that there is no one group with more than half of Council seats. The new Council administration is explicitly collaborative in nature, with four out of five political Groups represented on the Executive. In this situation, the Constitution lacks clarity about the definition of the Principal Opposition Group, and which Group may nominate the chairs of the Overview and Scrutiny Committees.
- 2.2 The proposed amendments to paragraphs 4 and 5 of Part 1 of the Constitution (Summary and Explanation) at **Annexe 1** define how the Council administration (Executive) is formed, and the definition of the Principal Opposition Group which is derived from that; and how the chairmen of the Overview and Scrutiny Committees are nominated. Importantly, the definitions work for the current No Overall Control situation as well as where there is a single-group majority in control of the Council. There are corresponding changes to the Overview and Scrutiny Procedure Rules in Part 4 of the Constitution.

3. Reinstatement of Informal Questions

- 3.1 The Leader and the Executive have made a commitment to developing a more collaborative form of governance at Waverley, and increasing the level of engagement with residents. A review of governance arrangements will be undertaken by a cross-party working group, and proposals requiring changes to the Constitution and/or Scheme of Delegation will be submitted to the Standards Committee for scrutiny in due course.
- 3.2 As a demonstration of intent, the Executive wishes to reinstate the opportunity for residents to ask informal questions before meetings of the Executive, which requires amendments to Council Procedure Rule 10 (Questions by the Public) and Executive Procedure Rule 2.9 (Questions by the Public) as shown on **Annexe 1**.

4. Remits of the Overview and Scrutiny Committees

- 4.1 In order to align better the remits of the Overview and Scrutiny Committees with Service Areas and Executive Portfolios, it is proposed to
- move Licensing from the remit of Community Wellbeing Overview and Scrutiny Committee to Environment Overview and Scrutiny Committee; and
 - move Parks, Countryside and Open Spaces from Environment Overview and Scrutiny Committee to Community Wellbeing Overview and Scrutiny Committee.
- 4.2 These amendments will be made to Article 6 of the Constitution which sets out the terms of reference of the Overview and Scrutiny Committees.

5. Scheme of Delegation – circumstances in which a planning application may be called in to a Planning Committee

- 5.1 The Council's Scheme of Delegation to the Head of Planning and Economic Development in relation to the determination of planning applications includes the following provision:

M. 4(g) planning applications which by the expiry of the 21 day consultation period, have received 5 or more letters of objection or 5 or more letters of support (but not a combination of both) shall only be determined under delegated powers after the Head of Planning (or any officer nominated by them) has received written confirmation from the relevant ward member(s) that they do not wish the matter to be determined by the relevant Planning Committee.

- 5.2 On 21 May 2019, the Local Government and Social Care Ombudsman published his final decision regarding a complaint about the way in which the Council dealt with a planning application for a new dwelling next to the complainant's home. A copy of the decision is attached as **Annexe 2**.
- 5.3 The Ombudsman found that there was some fault in the wording of paragraph M.4(g) of the Scheme of Delegation which sets out the circumstances in which planning applications may be considered by a planning committee. However, this fault did not make a difference to the outcome of the Council's planning decision.
- 5.4 The Ombudsman's Investigator concluded that paragraph M. 4(g), as currently worded, would allow the scheme of delegation to be triggered if 5 or more objection (or support) letters were received from the same individual or the same household, whereas in fact this is not the case. The Investigator therefore recommended that the Council should review its policy and inform the Ombudsman of the changes it has made within three months from the date of the decision, i.e. by 21 August 2019.
- 5.5 The Council has accepted the Investigator's recommendation, and it is proposed that paragraph M. 4(g) should be amended to read as follows:

"(g) planning applications which, by the expiry of the 21 day consultation period, have received 5 or more letters of objection or 5 or more letters of support (but not a combination of both **and not from the same individual or the same household**) shall only be determined under delegated powers following written confirmation from the relevant ward member(s) to the Head of Planning (or their nominee) that they do not wish the matter to be determined by the relevant Planning Committee."

Conclusion

The proposed amendments to the Constitution and Scheme of Delegation address specific issues that have arisen and which need to be effected immediately. A comprehensive review of the Constitution will be undertaken as part of the governance review to ensure it meets the requirements of the Council going forward, and is internally consistent across all the constituent parts.

Recommendation

That the proposed amendments to the Constitution and Scheme of Delegation are endorsed and recommended to Council for approval.

Background Papers

Definition of Principal Opposition Group

Constitution, Part 1 (Summary and Explanation)

4.0 How decisions are made

- The largest political group, or a combination of groups, shall form the administration of the Council (the Executive).
- The largest political group not represented on the Executive shall be the Principal Opposition Group.
- The Executive is the part of the Council which is responsible for delegated decisions. *(not strictly correct?)*
- The Executive is made up of the Leader and up to nine councillors appointed by the Leader (including the Deputy Leader) with the Executive's responsibilities divided into areas of responsibility (portfolios), each member leading on a specific group of policy issues.
- When major decisions are to be discussed or made, these are published in the Executive's Forward Programme of Key Decisions in so far as they can be anticipated.
- If these major decisions are to be discussed with council officers at a meeting of the Executive, this will generally be open to councillors and the public to attend except where personal or confidential matters are being discussed.
- The Executive has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework, this must be referred to the Council as a whole to decide.

5.0 Overview and Scrutiny Committees

- 5.3 In the event of a single party Executive, the Chairmen of the four Overview and Scrutiny Committees shall be elected from nominations put forward by the largest minority political group on the Council (this can include non-members of the largest minority group or members of the majority group); The Chairmen of the four Overview and Scrutiny Committees shall be elected from nominations put forward by the Principal Opposition Group of the Council (this can include non-members of the Principal Opposition Group or members of the administration group(s)) subject to the total number of Opposition members on the Council exceeding 10% of the overall membership (in the current composition of the Council, this would equate to 6 members). The Vice-Chairman of each Overview and Scrutiny Committee shall usually not be from the same political group as the Chairman. Without

consent of the Council, no member can be Chairman or Vice-Chairman of more than one Overview and Scrutiny Committee.

NB. Amended Paragraph 5.3 to replace the equivalent wording in paragraph 1 of the Overview and Scrutiny Procedure Rules in Part 4 of the Constitution.

Reinstatement of Informal Questions

Council Procedure Rules

10. QUESTIONS BY THE PUBLIC

10.1 General

Members of the public who have a legitimate interest in the Borough, by way of work or residency, may ask a question at ordinary meetings of the Council, Executive and Committees. Questions by the public will not be included as an agenda item on agendas for Special or Extraordinary meetings. The rules for asking a written question are set out in Procedure Rules 10.2-10.7 below.

Written questions

10.2 Notice of written questions

A written question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Head of Policy and Governance no later than close of business (5.00pm), 4 clear working days before the day of the meeting. Each question must give the name and address of the questioner.

10.3 Order of questions

Questions will be asked in the order notice of them was received, except that the Mayor or Chairman may group together similar questions.

10.4 Number of questions

At any one meeting no person may submit more than 1 written question and no more than 1 such question may be asked on behalf of one organisation.

10.5 Scope of questions

The Chief Executive may reject a question if it:

- is not a matter in relation to which the Council has powers or duties or which affects the Borough;
- is defamatory, frivolous or offensive;
- is substantially the same as a question which has been put at a meeting of the Council in the past six months;

- requires the disclosure of confidential or exempt information;
- is not substantially in the form of a question, or the length of the preamble is disproportionate to the question.

10.6 Record of written questions

The Chief Executive will immediately send a copy of the question to the Chairman of the Executive and relevant Portfolio Holder. Where the Chief Executive recommends that the question be rejected, reasons for rejection will be stated.

Copies of all questions will be circulated and made available to councillors and the public attending the meeting. All written questions submitted will receive a prepared answer.

10.7 Reference of question to the Executive

Unless the Mayor decides otherwise, no discussion will take place on any question, but any member may move that a matter raised by a question be referred to the Executive or the appropriate named Committee or Sub-Committee. Once seconded, such a motion will be voted on without discussion.

Informal questions at the Executive

10.8 Members of the public may ask informal questions of the Executive before the start of each ordinary meeting of the Executive, in accordance with the arrangements at Executive Procedure Rule 2.9

Petitions

10.9 Presentation of petitions

Members of the public can submit petitions electronically through the Waverley website or in hard copy addressed to the Chief Executive. The petition will be dealt with in accordance with the Waverley Petition Scheme.

Executive Procedure Rules

2.9 Questions by the Public

Written questions

2.9.1 Members of the public may ask written questions at ordinary meetings of the Executive in accordance with the provisions in Council Procedure Rules 10.2 – 10.7. The Leader and/or the Deputy Leader or appropriate Portfolio Holder should be invited to respond to the question.

Informal questions

2.9.2 Informal questions may be asked of the Leader, Deputy Leader or an appropriate Portfolio Holder before the start of each ordinary meeting of the Executive for up to 15 minutes, including replies. No prior notice needs to be given. Questions will be taken in the order in which questioners register with the Democratic Services Officer prior to the start of question time. When read out, each question must be concluded within 2 minutes. In the event that it is not possible to give a verbal response, a written response will be provided following the meeting.

The Ombudsman's final decision

Summary: Ms X complains about the Council's decision to approve her neighbour's planning application. There was some fault in the wording of a policy, which the Council agreed to rectify. The fault did not make a difference to the outcome of the Council's planning decision.

The complaint

1. Ms X complains about the Council's decision to approve significant amendments to an approved planning application for a house next to her home.
2. Ms X says that the Council:
 - failed to take account of neighbour representations;
 - should have referred the application to the planning committee and not allow it to be decided by officers using delegated powers;
 - should have insisted upon a full planning application, rather than accepting and deciding an application to vary planning conditions on an earlier approval;
 - failed to assess the accuracy of application plans;
 - granted access over its own land by approving the application; and
 - relied on the continued existence of a tall hedge to protect amenity, but the hedge was later removed.
3. Ms X says, because of the Council's failures, her amenity is affected and the value of her home is reduced.

The Ombudsman's role and powers

4. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
6. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free

service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:

- it is unlikely we would find fault, or
- the fault has not caused injustice to the person who complained, or
- the injustice is not significant enough to justify our involvement, or
- it is unlikely further investigation will lead to a different outcome, or
- we cannot achieve the outcome someone wants.

(Local Government Act 1974, section 24A(6), as amended)

How I considered this complaint

7. I read the complaint and discussed it with Ms X. I read the Council's response to the complaint and considered documents from its planning files, including the plans and the case officer's report.
8. I gave the Council and Ms X an opportunity to comment on a draft of this decision and took account of the comments I received.

What I found

Planning law and guidance

9. Councils should approve planning applications that accord with policies on the local development plan, unless other material planning considerations indicate they should not.
10. Planning considerations include things like:
 - access to the highway;
 - protection of ecological and heritage assets; and
 - the impact on neighbouring amenity.
11. Planning considerations do not include things like:
 - views over another's land;
 - the impact of development on property value; and
 - private rights and interests in land.
12. Councils may impose planning conditions to make development acceptable in planning terms. Conditions should be necessary, enforceable and reasonable in all other regards.
13. Council constitutions set out how decisions are made. Some decisions are made by committees of members and some by officers, using delegated powers.
14. Planning enforcement is discretionary and formal action should happen only when it would be a proportionate response to the breach. When deciding whether to enforce, councils should consider the likely impact of harm to the public and whether they might grant approval if they were to receive an application for the development or use.

Background

15. Ms X's neighbour had planning permission to build a single storey house on land next to her home. The Council approved the application subject to planning conditions, including one that required the development was built in accordance with the approved plans.
16. In 2018 the neighbour applied to vary this condition, by changing the plans to change the design, mainly by adding a further storey. Ms X and others objected to the application. The case officer wrote a report, setting out his views on the application. The report includes:
 - a description of the location and proposal;
 - a summary of relevant site history;
 - details of relevant planning policies;
 - a summary of comments from consultees, including neighbours;
 - an analysis of the material planning considerations, including site history, green-belt policy, design and visual impact, impact on neighbouring amenity and vehicle parking and highway access and parking.
17. The case officer recommended approval subject to conditions, including one that required the development was built in accordance with plans.
18. The Council approved the application, subject to the recommended conditions. The decision was made by an officer using delegated powers. The Council's delegation scheme says that minor applications will be decided by committees, unless there are:
 - five or more letters of objection or support (but not a combination of both);
 - the letters are received before the 21-day consultation deadline; and
 - the local member confirms in writing that they do not wish the application to be decided by the planning committee.
19. Ms X was unhappy with the Council's decision and complained to us.
20. After she had complained to us, Ms X realised the new house was being built closer to her boundary than was shown in the plans. She complained to the Council, and an enforcement officer visited the site. The enforcement officer agreed there was a breach of planning control and the Council invited the developer to submit a retrospective planning application to seek approval for what had been built.
21. A new case officer considered the application and wrote a report. The report covered the same issues as before, but focused on the change, the position in which the new building had been built. The case officer set out the differences and recognised there would be some overlooking towards Ms X's home, though most of the first-floor windows would be obscurely glazed. The officer recommended approval, subject to conditions. The retrospective application was approved by an officer using delegated powers.

My findings

22. We are not an appeal body to planning decisions and third parties, such as Ms X, have no right of appeal in the planning process. Our role is to review the process by which decisions were made and, when we find fault, to determine whether it caused an injustice. To decide whether an injustice was caused, we must first decide whether, but for the fault, it is likely the outcome would have been different.

The 2018 planning decision

23. Ms X's complaint to us focused mainly on the 2018 planning approval. I see no evidence of fault in the way that this planning application was considered and the decision made, though I do have some concerns about the Council's delegation scheme, which I will say more about below.
24. I can see that before a decision was made, the Council followed the process we would expect, taking account of the application plans, relevant policy, the concerns of neighbours and other material planning considerations. The 2018 approval added a second floor to the house approved in 2015 and I do not doubt this significantly increased the impact the new building would have on Ms X. However, the documents show the Council knew about the change it approved and considered the implications.
25. The Council responded to my enquiries to confirm that before the consultations deadline ended, it received four letters of objection and two of support. It says three more letters were received after the deadline expired.
26. The Council says that because of this, the constitution allowed for the application to be approved by officers using delegated powers.
27. Some of the objection/support letters on the Council's website had receipt dates on them, but some did not. The Council says there are some technical difficulties in showing receipt dates on its website, but it is looking at ways to resolve this problem. It says its internal database does show receipt dates, which can be provided if required.
28. Most of this complaint relates to the 2018 planning decision. The developer did not build in accordance with this approval and so no significant injustice can be caused by the plans approved by this decision. It is possible that Ms X may question the Council's response regarding numbers and dates of objection letters, but as the building is not built in accordance with these plans, but with a later approval, there is little to be achieved by further investigating the process for this decision.

The Council's enforcement decision

29. After building began, Ms X noticed the building was closer to her boundary than was approved in the plans. Towards the end of 2018, an enforcement officer visited the site, decided there was a breach of planning control and invited the developer to submit a fresh application to vary the plans.
30. The planning enforcement process we expect is as follows. We expect councils to consider allegations and decide what, if any, investigation is necessary. If the council decides there is a breach of control, it must consider what harm is caused to the public before deciding how to react. Providing the council is aware of its powers and follows this process, it is free to make its own judgement on how or whether to act.

31. Government guidance says formal enforcement action should be the last resort and councils are encouraged to resolve issues through negotiation and dialogue with developers.

32. The Council has followed the process we expect in making its enforcement decision and so I find no fault in how it reached its judgement.

The 2019 planning decision

33. Following the enforcement visit, the developer submitted a retrospective planning application for what had been built.

34. Before it made its decision in early 2019, the Council considered the plans, the building as it was constructed, objections from neighbours, relevant policy and other material planning considerations. The Council followed the process we would expect, and so I find no fault in the way this decision was made.

The Council's delegation scheme

35. In its response to my enquiries, the Council said the delegation scheme would not be triggered if it received five or more objection (or support) letters from the same individual or the same household. However, the delegation scheme does not make this clear. We expect policy to be clear and unambiguous. The Council's policy does not meet this standard and it does not accord with the Council's working practices. Because of this, I find fault.

36. The receipt dates of objection or support letters are important, as they influence the outcome of the delegation scheme. Planning decisions are made in public and it is important the public can see the process is properly followed. It would be good practice if the letter receipt dates were shown on the website, but the Council should have a formal record that can be produced if necessary.

37. When we find fault, we need to determine whether it caused a significant injustice to the complainant. Ms X believes a planning committee might have made a different decision, but I have no evidence to show this would be the most likely outcome. The case officer's reports for both the 2018 and 2019 planning application decisions demonstrate that the material issues were considered.

38. I cannot say it is more likely than not that a committee would have decided against following officer advice. In any event, Ms X's concerns mostly related to the 2018, decision, which was superseded by the 2019 approval.

39. However, planning policy should be clear and unambiguous so that it may be understood and applied consistently. Because of this, I recommended the Council review its policy and inform us of the changes it makes. The Council accepted my findings and recommendations.

Other matters

40. Ms X raised other matters, but I have decided not to investigate them further. My reasons are as follows:

- *The Council should have insisted on a 'full plans' application.* The type of application was a matter for the developer to decide, in the first instance. The Council might, at its discretion, have decided another application type to be appropriate, but that is a matter for its judgement. We are not an appeal body for planning judgements and decisions and no allegation of procedural fault is made here.

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- *The Council failed to assess the accuracy of application plans.* The duty to submit accurate plans is placed on the developer. The Council will only be criticised if an error would have been obvious to any planning officer and that the difference is significant to the outcome. I have seen no evidence to support either part of this test.
 - *The Council granted access over its own land by approving the application.* Land ownership rights are not planning considerations and can have no bearing on the outcome of planning decisions. Whether the Council chooses to grant legal rights to other individuals is a matter for it to decide. The impact on highway safety was considered during the planning process.
 - *The Council relied on the continued existence of a tall hedge.* The hedge is referred to in the 2018 case officer report, and no doubt provided some benefit to Ms X. However, the case officer did not conclude it was essential and did not protect it using planning controls.

Agreed action

41. The Council agreed to review its policy and clarify it. It will then ensure its officers and members are aware of and understand the changes.
42. The Council will make necessary changes to its policy and/or working practices and report them to the Ombudsman within three months from the date of this decision.

Final decision

43. I found fault in the way a Council policy was worded. I completed my investigation because the Council accepts my findings and recommendations.

Investigator's decision on behalf of the Ombudsman