

# **WAVERLEY BOROUGH COUNCIL**

**EXECUTIVE – 4 APRIL 2017**

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## **Title:**

### **AMENDMENT TO THE CONSTITUTION AND SCHEME OF DELEGATION PLANNING ENFORCEMENT MATTERS**

**[Portfolio Holder: Cllr Brian Adams]  
[Wards Affected: All]**

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## **Summary and purpose:**

The purpose of this report is to seek an amendment to the Council's Constitution and the current Scheme of Delegation to Officers in respect of planning enforcement related matters.

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

This report relates in particular to the Corporate Priority of 'Environment', in that planning enforcement and the monitoring of and compliance with planning obligations will help to protect and enhance rural and urban communities.

**Financial Implications:** There are no financial implications associated with this report.

## **Legal Implications:**

Permanent delegation to officers will ensure that the Council's decision-making is expedient without undue bureaucracy. The Scheme of Delegation provides a mechanism at an appropriate level to give efficacy to the Council's policies and procedures.

The Constitution provides the originating powers and functions for the day-to-day running of the Council. In lieu of any provision for the enforcement of planning obligations, the Constitution and the Scheme of Delegation needs amendment.

The Executive should note that should the separate report and recommendations to this meeting regarding the new Scheme of Delegation to Officers subsequently be approved by full Council, Recommendation 2 in this report will fall away as the proposed new delegation would no longer be required under the new Scheme.

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## **Introduction**

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.

## **Planning Enforcement**

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).

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).
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.*

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.
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.

### **The Council’s Constitution**

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.

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.
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.
10. To allow for the effective enforcement of planning obligations, the amendments proposed are required. The amendment to the Constitution shall require the proposal to be considered by the Constitution Special Interest Group, the Executive and, if necessary, the Standards Panel, in line with the requirements of the Constitution Part 1: 15.02.

### **Recommendation**

That the Executive recommends to the Council that the Constitution and Scheme of Delegation be amended as follows:

1. To insert into the Constitution at Part 3 and into the table of functions for 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
2. 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.*"

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### **Background Papers**

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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