

WAVERLEY BOROUGH COUNCIL

STANDARDS PANEL – 6 JUNE 2017

EXECUTIVE – 6 JUNE 2017

EXTRAORDINARY COUNCIL – 6 JUNE 2017

Title:

SCHEME OF DELEGATION REVIEW AND REVISIONS TO THE CONSTITUTION

**[Portfolio Holder: Cllr Julia Potts]
[Wards Affected: All]**

Summary and purpose:

The purpose of this report is to consider revisions to the Scheme of Delegation to officers and to agree amended wording to the constitution which relates to the decision taken by the Council in 2014 to appoint substitutes to the Joint Planning Committee.

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

The Council's Constitution and Scheme of Delegation relate to the full spectrum of the Council's activities so changes to it are likely to relate to all of the Council's Corporate Priorities. However, the aim of streamlining and simplifying decision-making processes by reviewing the documents aims to progress the Council's objectives of providing excellent customer service and achieving value for money.

Financial Implications:

There will be savings in officer and member time in amending the scheme further to ensure it is kept up to date and enables actions to be taken more quickly.

Legal Implications:

It is the Legal Services team's view that the proposed updates to the Council's Scheme of Delegation will result in a more robust scheme and reduce the risk of officer decisions being challenged.

In the event the Judicial Review claim is successful, it is the Legal Services team's and Counsel's view that the Council should protect its ability to make representations at the subsequent Inquiry. The Council is advised to take the steps outlined in the body of this report in order to achieve this outcome by regularising its Constitution in respect of appointing JPC substitutes.

Background

1. The Council, at its meeting on 25 April 2017, adopted a new Scheme of Delegation to Officers based on a new approach of operating as an 'exception' scheme, wherein all powers and functions are delegated down to officers with the exception

of any powers and functions that either must remain with a specific Committee (or with the Council), or which the Council has previously decided must rest with members. This approach has been adopted by local authorities across the Country, and as a starting point, the Council used the scheme in operation at Surrey Heath Borough Council.

2. At the point of adopting the scheme, members were mindful that with such a significant change in approach and ways of working, the scheme would need to be kept under regular review and any proposed adjustments reported back to members at the appropriate time.
3. Subject to a successful outcome at the Judicial Review Hearing in respect of the Farnham Neighbourhood Plan due to take place on 15 June, the Council's Head of Planning will need to 'make' the Farnham Neighbourhood Plan under delegated authority. Because the legislation relating to the Council's powers in relation to neighbourhood plans stems from the Localism Act rather, than the Town and Country Planning Acts to which the scheme specifically refers, officers advise that it would be prudent, as part of this early review of the scheme of delegation, to include additional wording within the scheme to ensure that the Council's process is beyond any potential challenge on this point.
4. Alongside this proposal, a number of additional amendments are proposed and these are shown as tracked changes. In particular, the opportunity has been taken to ensure that the optimum balance is achieved between the delegation of specific powers and of general wide-ranging authority (whenever the stated exceptions do not apply). The aim in doing so is to provide a scheme which is transparent and which enables officers to achieve service outcomes more quickly and efficiently.
5. All proposed amendments are shown as tracked changes in the revised document, attached as Annexe 1. The document has also been further formatted for ease of understanding so that each delegation is clearly and individually numbered and exceptions are shown in red text. This is consistent with the Council's approach of re-branding constitutional documents and making them more user-friendly and accessible on our website.

Joint Planning Committee – Substitution Scheme

6. In December 2014, the Council agreed to the introduction of a scheme that allowed for substitute members to be appointed at meetings of the Joint Planning Committee with effect from January 2015. The justification for seeking this change was to improve the attendance at meetings of the Joint Planning Committee which had started to fluctuate, and members were particularly concerned that there should be more consistent attendance levels following the amendment to the constitution earlier in 2014 which had resulted in planning applications proposing housing schemes with a net increase of more than 25 dwellings being determined at Joint Planning Committee level rather than Area Planning Committees. It was also envisaged that the appointment of substitute members would help to ensure that the Committee was well represented by councillors from across the Borough when dealing with large-scale planning applications, particularly when a number of apologies had been received.

7. Following the decision of the Joint Planning Committee in December 2016 to grant planning permission for an application at Dunsfold Park, the Council's use of substitutes has been challenged, in part because the associated references in the Constitution were not updated at the same time as the Council decision being made. Waverley Borough Council refutes the suggestion that its approach to appointing JPC substitutes is unlawful and is accordingly defending its position in the Judicial Review.
8. Legal advice provided to the Council has, to date, been that the Council need not amend its constitution and should continue to operate the decision-making process around Joint Planning Committees in the same way that it had been since the Council decision was taken. However, because the Public Inquiry in relation to Dunsfold Park (following the subsequent call in of that application by the Secretary of State) has been scheduled to take place less than a week after the Judicial Review hearing concludes, the Council has now been advised that it would be prudent to update its constitution prior to the outcome of the Judicial Review in order to insure against any unnecessary inhibition of proceedings at the inquiry. It is for this reason that the matter is being brought forward for the attention of the Council at this time.
9. The proposed textual changes needed to resolve this issue are set out at Annexe 2. Only the relevant pages of the constitution have been reproduced as part of this annexe. Since 2014 when the original decision was taken, there has been a marked improvement in the level of attendance at meetings of the Joint Planning Committee, and the statistics which demonstrate this are set out at Annexe 3.

Changes to the Constitution

10. In accordance with the Council's constitution, the proposed changes to these documents will be commented upon by the Standards Panel prior to their consideration by the Executive and Council.
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Recommendation

It is recommended that the Standards Panel reviews the report and recommends to the Executive and Council that:

1. the revised Scheme of Delegation, as attached as Annexe 1, be approved and adopted; and
2. the amendments to the Constitution, to reflect the Council decision regarding the appointment of substitutes to the Joint Planning Committee, as set out at Annexe 2, be agreed.

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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