

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

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

CONTACT OFFICER:

Name: Robin Taylor
Head of Policy & Governance

Telephone: 01483 523108
E-mail: robin.taylor@waverley.gov.uk