

WAVERLEY BOROUGH COUNCIL
STANDARDS & GENERAL PURPOSES COMMITTEE

6 DECEMBER 2021

Title:

Scheme of Delegation
– Proposed amendment re variation to S106 agreement

Head of Service: Robin Taylor, Head of Policy & Governance (Monitoring Officer)

Key decision: No

Access: Public

1. Purpose and summary

- 1.1 To consider a request for an amendment to the Scheme of Delegation regarding approval of variations to S106 agreements attached to planning permissions.

2. Recommendation

It is recommended that the Standards & General Purposes Committee considers the request to make an exception to the delegation (M.2) to the Head of Planning & Economic Development and makes an appropriate recommendation to Full Council.

3. Reason for the recommendation

To ensure transparent and open decision-making.

4. Background

- 4.1 On 28 September 2021, the Eastern Planning Committee considered an application (S52/2021/01396) to modify the Section 106 legal agreement attached to the outline planning permission WA/2018/1815, seeking changes to the affordable housing clauses, including amending the tenure and bed size of the affordable housing and the definition of affordable rented units. The affordable housing to be provided would remain at 30% of the total units, as agreed at the outline planning permission stage. The application had been called into committee by the Local Ward Councillor for further consideration as to whether the changes to the affordable housing tenure mix should be agreed.
- 4.2 At the meeting of Full Council on 19 October, Cllr Maxine Gale asked that consideration be given to amending the Scheme of Delegation to Officers to ensure that any application to change or amend previously agreed housing tenure splits are automatically referred to the appropriate Planning Committee for decision and not dealt with under delegated powers.

- 4.3 Section 106A of the Town and Country Planning Act 1990 requires 5 years to have elapsed since the time of the original legal agreement before it can be varied by way of an application. However, as long as all parties who are included on the original Section 106 agreement agree to the proposed changes, a variation can be made prior to the 5 years referenced above.
- 4.4 The current Scheme of Delegation to the Head of Planning & Economic Development includes the following provisions:

	Authority	After consultation with	Function
M.2	To agree variations to Section 106 legal agreements under the Town and Country Planning Act 1990 which relate to planning applications determined by a Planning Committee.	The Chairman of the Planning Committee and Ward Councillors	Non-executive
M.6	To agree the terms of, and variations to, Section 106 Legal Agreements under the Town and Country Planning Act 1990 in connection with the grant of planning permission under delegated powers and Section 106 agreements following a refusal on appeal.	N/A	Non-executive

- 4.5 Delegation M.2 already requires the Head of Planning & Economic Development to consult with the Chairman of the relevant Planning Committee and Ward Councillor(s) before agreeing any variation to a Section 106 agreement attached to a planning permission granted by a Planning Committee. This gives the opportunity for a discussion about the implications and significance of the proposed variation, and for the application to be called-in to the Planning Committee if it is felt necessary. Whilst the proposed variation under application S52/2021/01396 was significant, it doesn't necessarily follow that all proposed variations will be, or that they will be adverse, and a blanket exception to the Scheme of Delegation may result in applications having to be referred to a Planning Committee even when there is agreement to approve the variation.
- 4.6 The Committee is asked to consider whether an explicit exception is required to the delegation set out at M.2: **"To agree variations ...except where the variation proposed relates to the proposed tenure mix of the affordable housing provision."**

5. Relationship to the Corporate Strategy and Service Plan

- 5.1 The Scheme of Delegation to Officers is part of the council's decision-making arrangements and supports open and transparent governance.

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

Any exceptions to the Scheme of Delegation add to the workload of the Planning Committees. Maintaining the conditional delegation as currently stated strikes a balance between delegated decision-making where there is consensus, and referral to a Planning Committee where there is not.

6.2 Risk management

6.3 Legal

Delegations to officers ensure that the Council's decision-making is efficient without undue bureaucracy, with functions and responsibilities lying at the appropriate level of delegation.

6.4 Equality, diversity and inclusion

There are no direct equality, diversity or inclusion implications in this report. Equality impact assessments are carried out when necessary across the council to ensure service delivery meets the requirements of the Public Sector Equality Duty under the Equality Act 2010.

6.5 Climate emergency declaration

There are no climate emergency implications to this decision.

7. Consultation and engagement

7.1 N/A.

8. Other options considered

8.1 The options are to rely on the existing conditional delegation, which allows for an application to vary a S106 agreement to be referred to committee by the appropriate Ward Member or Planning Committee Chairman; or create an explicit exception for any application to vary the tenure of affordable housing provided under a S106 agreement to automatically be referred to a Planning Committee.

9. Governance journey

9.1 If the Standards & General Purposes Committee recommends an amendment to the Scheme of Delegation, this will be referred to Full Council for approval.

Background Papers

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

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Agreed and signed off by:
Legal Services: date
Head of Finance: date
Strategic Director: date
Portfolio Holder: date