

TO: GOVERNANCE AND AUDIT COMMITTEE  
27 MARCH 2012

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**AMENDMENTS TO THE SCHEME OF DELEGATION  
Director of Corporate Services – Legal**

**1 PURPOSE OF REPORT**

- 1.1 This report seeks approval to two sets of amendments to the Scheme of Delegation to Officers contained in the Council's Constitution, which amendments are required in response to recent legislation.

**2 RECOMMENDATIONS**

- 2.1 **That Council be recommended to amend the Council's Scheme of Delegation to officers as proposed in Paragraphs 5.3 and 5.10 of this report.**

**3 REASONS FOR RECOMMENDATIONS**

- 3.1 The proposed amendments to the delegations to the Director of Environment Culture and Communities is proposed in order to ensure the effective discharge of the Council's functions under the Flood and Water Management Act 2010 ("the 2010 Act").
- 3.2 The proposed amendments to the delegations of the Chief Officer: Planning and Transport are proposed to allow the Council to effectively determine applications under Sections 73 and 96A of the Town & Country Planning Act 1990.

**4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Not to make the proposed amendments. However, failure to amend the Scheme of Delegation as proposed would mean that:-
- (a) the Council would not be able to properly discharge its functions under the 2010 Act, and
  - (b) the delegations to the Chief Officer: Planning and Highways do not reflect current legislation.

**5 SUPPORTING INFORMATION**

Delegation to the Director of Environment, Culture and Communities

- 5.1 The 2010 Act is a complex piece of legislation and it is being brought into force in stages. Under the Act the Environment Agency has a strategic, national role whilst Unitary and County Councils are given a new leadership role in local flood risk management. The major functions of the Council under the 2010 Act will be:-
- developing and overseeing the implementation of a Local Flood Risk Management Strategy

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- investigating incidents of flooding
- producing and maintaining a register of all structures or features which are likely to have a significant effect on flood risk
- determining applications for approval for Sustainable Drainage Systems and consents for works to ordinary water courses.

The process for determining applications for approvals and consents will be more akin to the existing regime relating to Building Control rather than to applications for Planning Permission i.e. it will be an entirely technical assessment.

5.2 Clearly, most of the functions under the 2010 Act will be more appropriately discharged by officers rather than by Members. However, it is proposed that approval of the Local Flood Risk Management Strategy should be reserved for Members. The strategy must specify the following:-

- the risk management authorities in the Borough
- the flood risk management functions that may be exercised by those authorities in relation to the Borough
- the objectives for managing local flood risk
- the measures proposed to achieve those objectives
- how and when the measures are expected to be implemented
- the costs and benefits of the measures, and how they are to be paid for
- how the strategy contributes to the achievement of wider environmental objectives

5.3 The delegations to the Director of Environment Culture and Communities currently include functions "Relating to drainage (including Land Drainage)". It is proposed that this should be amended to "Relating to flooding and drainage (including Land Drainage and functions under the Flood and Water Management Act 2010)" but that the exceptions to delegated powers should now include "Approval of the Local Flood Risk Management Strategy".

### Delegation to the Chief Officer: Planning and Transport

5.4 The delegations to the Chief Officer provide that the following are **not** delegated to officers:-

- applications which any single Member expressly requests should be determined by the Planning Committee
- applications attracting valid planning objections from three or more households and/or organisations

It is **not** proposed that those exceptions to the delegated authority of the Chief Officer should be amended.

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- 5.5 The delegations also currently contain the following exceptions to the power of the Chief Officer to determine applications:-
- (a) “authority to relax, delete or vary conditions attached to permissions and consents is limited to where the permission or consent was given under delegated powers, and
  - (b) “authority to minor variations and alterations for (sic) plans shall be determined in accordance with Minute 100 of the Development Committee of 29 May 1992”. A copy of the relevant minute is shown as Annexe A to this report.
- 5.6 As may be gathered from exception (b) referred to in paragraph 5.5, the two exceptions are of some considerable antiquity. They no longer reflect the legislative scheme for Town and Country Planning (it is questionable whether they ever did so).
- 5.7 As to exception (a) in paragraph 5.5, Section 97 of the Town and Country Planning Act 1990 does contain a power to “modify” a planning permission. However, exercise of that power attracts a right to claim compensation and it is very doubtful that exception (a) was ever intended to apply to a Section 97 Modification Order. Section 73 of the Act allows for an application for planning permission to develop land without compliance with conditions attached to a previous planning permission. However, a Section 73 permission is a separate planning permission (which is determined in the normal way for planning applications and hence the exceptions to delegated authority referred to in paragraph 5.4 can apply) and does not “relax, delete or vary conditions” attached to any earlier permission. Recent case law has thrown into doubt the legality of Local Planning Authorities approving minor alterations to plans for approved developments other than by way of an application for a further planning permission. As a consequence, the Planning Act 2008 inserted (with effect from October 2009) a new Section 96A into the 1990 Act. Section 96A **does** allow a local planning authority to make a change to a planning permission if the change is “not material”. In particular, Section 96A **does** allow for minor amendments to or deletions of conditions and can permit minor amendments to plans. Any minor non-material variation should now be made using the Section 96A process which requires an application (to which the exceptions to deal with under delegated authority related to in paragraph 5.4 could be invoked).
- 5.8 At the same time as the government issued guidance on the use of Section 96A power to make non-material amendments it also issued guidance on how to make “minor material amendments”. However, the process proposed involves making a Section 73 application which, as alluded to above is an application for a separate planning permission.
- 5.9 Clearly, the two existing restrictions on officers amending planning conditions/plans referred to in paragraph 5.5 above arose from a concern that officers should not have carte blanche to make decisions which might undermine the substance of a decision taken by committee. Given that Section 96A now provides for a separate application for non-material amendments and a Section 73 permission also requires a new application the rationale for those existing limitations is effectively negated. If any Member has a concern about any application for a non-material alteration (under

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Section 96A) they may require the matter to go to Committee by virtue of the exception to delegated authority set out in paragraph 5.4. In order to avoid any doubt the delegated authority to the Chief Officer could stipulate that no alterations to a planning permission or to approved plans should be made other than pursuant to an application to that effect.

- 5.10 It is therefore proposed that the Scheme of Delegation be amended by:-
- (a) deleting the two exceptions referred to in paragraph 5.5 above, and
  - (b) providing that decisions to modify a planning permission under Section 97 of the 1990 Act is not delegated, and
  - (c) providing that no non-material amendments to a planning permission or approved plans should be approved other than pursuant to an application under Section 96A of the 1990 Act.

## **6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

- 6.1 The Borough Solicitor is the author of this report.

### Borough Treasurer

- 6.2 There are no financial implications directly arising.

### Equalities Impact Assessment

- 6.3 Not relevant.

### Strategic Risk Management Issues

- 6.4 Not relevant.

### Other Officers

- 6.5 None.

## **7 CONSULTATION**

### Principal Groups Consulted

- 7.1 None.

### Method of Consultation

- 7.2 None.

### Representations Received

- 7.3 None.

### Background Papers

None.

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Aj/f/reports/Governance and Audit Committee – Scheme of Delegation Amendment  
2012