

**TO: GOVERNANCE AND AUDIT COMMITTEE
2 JULY 2013**

**SCHEME OF DELEGATION – SECTION 52 AGREEMENTS
Director of Corporate Services – Legal**

1 PURPOSE OF REPORT

- 1.1 To seek an amendment to the Scheme of Delegation to Officers in the Council's Constitution to provide that the power of the Chief Officer: Planning and Transport to determine applications for the release or amendment of provisions contained in agreements entered into under section 52 of the Town and Country Planning Act 1971 (whether also made pursuant to other legislation or not) should be subject to the same constraints as other planning applications.

2 RECOMMENDATIONS

- 2.1 **That Council be recommended to amend the Scheme of Delegation to Officers as proposed in section 5 of this report.**

3 REASONS FOR RECOMMENDATION

- 3.1 It would be inappropriate for applications for the release or amendment of provisions contained in a Section 52 Agreement to be determined by an officer where they attract a significant number of objections or Members request that the application be determined at Member level.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Not to amend the Scheme of Delegation as proposed. However, if the proposed amendment is not made the power to determine all decisions to release or amend section 52 covenants would rest with the Chief Officer: Planning and Transport, whatever the level of Member interest or the number of objections received.

5 SUPPORTING INFORMATION

- 5.1 Section 52 of the Town and Country Planning Act 1971 was the predecessor of section 106 of the Town and Country Planning Act 1990 (which in its current form was enacted by the Planning and Compensation Act 1991 as amended by the Planning Act 2008). Section 52 empowered local authorities to enter into agreements with landowners "restricting or regulating the development or use of land". For technical legal reasons such agreements were frequently also entered into pursuant to other legislation, particularly section 111 of the Local Government Act 1972 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982. It is of relevance to note that Section 52 Agreements did not constitute "planning obligations", a concept only introduced in relation to Section 106 Agreements by the 1991 Act.
- 5.2 The Scheme of Delegation to officers provides that the Chief Officer: Planning and Transport is authorised to exercise all the Council's planning functions

Unrestricted

save those specified as “Exceptions and Limitations”. The first two such exceptions are:-

- (a) applications (including applications to vary planning obligations or for a building to be listed but not including applications for a Certificate of Lawful Use) which any single Member of the Council expressly requests should be determined by the Planning Committee, provided that the request is supported, in writing, by a valid planning reason.
- (b) applications (including applications to vary planning obligations or for a building to be listed but not including applications for Certificate of Lawful Use) attracting valid planning obligations before a delegated decision is made, where objections arise from more than three households and/or organisations, may only be allowed by the Chief Officer: Planning and Transport if he considers it appropriate to do so following reference to the Chairman of the Planning Committee and Ward Councillors.

As Section 52 Agreements do not constitute “planning obligations” the two exceptions set out do not apply to them i.e. unless the Scheme of Delegation is amended then all applications to release or amend section 52 covenants could be determined by the Chief Officer: Planning and Transport notwithstanding that an application has attracted more than three objections.

- 5.3 As Members will be aware, the Site Allocations Development Plan Document will shortly be brought to Council for approval, with modifications from the draft considered at the Examination in Public. One of the major sites proposed for residential development is the Blue Mountain Golf Course. That land is subject to a Section 52 Agreement. If residential development is to proceed on the Blue Mountain site the developer will require a release of certain of the covenants in the Section 52 Agreement. It is anticipated that the Council may receive an application for a release and it is highly likely that there would be a significant number of objections to such an application. In those circumstances it would be inappropriate for an officer to determine the application.
- 5.4 Under the Local Government Act 2000 all Council functions are Executive functions unless regulations specify otherwise. Unsurprisingly (given that section 52 was repealed before the legislation relating to Executive Arrangements was enacted) the relevant regulations do not specify the release or amendment of provisions in section 52 agreements as non-Executive functions. Accordingly, if responsibility for making a decision relating to section 52 agreements ceases to be that of the Chief Officer: Planning and Transport the decision will rest with the relevant Executive portfolio holder or the full Executive; by law, the decision cannot be one for the Planning Committee.
- 5.5 To ensure that in appropriate circumstances applications to release or amend provisions in Section 52 Agreements (whether made pursuant to other legislation or not) are determined by Members rather than officers, those exceptions and limitations to the powers of the Chief Officer: Planning and Transport set out in 5.1 above will need to be amended. As to paragraph (a) of the exceptions, it should be amended to include applications relating to Section 52 Agreements which any single Member of the Council expressly requests should not be determined by the Chief Officer: Planning and

Transport, provided that the request is supported in writing, by a valid planning reason. As to exception (b), the amendment required is to include section 52 applications when objections arise from more than three landowners and/or organisations. The effect will be that such applications will be determined by the Executive or an Executive Member.

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 required.

Strategic Risk Management Issues

6.4 None.

Other Officers

6.5 Both the Chief Executive and Chief Officer: Planning and Transport have been consulted and concur with the recommendations.

7 CONSULTATION

Principal Groups Consulted

7.1 None.

Method of Consultation

7.2 Not relevant.

Representations Received

7.3 None.

Background Papers

None.

Contact for Further Information

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Doc. Ref.

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