

**COUNCIL
24 SEPTEMBER 2003**

**REVIEW OF CONSTITUTION:
ENVIRONMENT DEPARTMENT, PLANNING AND LICENSING FUNCTIONS
(Report of the Constitution Review Group)**

1 INTRODUCTION

- 1.1 The Constitution Review Group has considered proposals for changes to the Constitution arising from the Licensing Act 2003 as well as a proposals for the size of the Planning & Highways Committee and a review of delegations to the Director of Environment. The Licensing Act 2003 has major implications to the Council mainly as a consequence of the transfer to the Council of the responsibility for liquor licences from the courts. Other changes are to be introduced that will affect how public entertainment licences are issued and conditioned.
- 1.2 The Best Value Performance Review of Development Control highlighted the need to make a number of changes in relation to the decision-making process in order to improve performance and increase public accountability, including a reduction in the number of Members on the Planning & Highways Committee.
- 1.3 As a consequence of the above, it is necessary to comprehensively review how the licensing and planning functions should be discharged by the Council, including the scheme of delegation to ensure that all resources are used to best effect.
- 1.4 In addition, when the Environment Department was formed the two existing officer delegation schemes were simply bolted together. There is a need is to rationalise the scheme and to delegate all authority to the Director of Environment who in turn gives authority to other officers within the department according to their skills and seniority. This ensures that the department is able to function at all times and that all officers have the appropriate authority to act.
- 1.5 This report proposes modification in the way that the scheme of delegation looks, a number of technical changes in relation to inter departmental working and some changes that clarify matters or are felt necessary to improve performance. Any changes agreed will need to be confirmed by Council.

2 RECOMMENDATIONS

2.1 That with immediate effect:

- (a) the following amendments to the Council's Constitution be approved:**
- (i) the insertion of a provision into Part 3 of the Constitution, which designates the Licensing and Safety Committee as the Licensing Committee for the purposes of the Licensing Act 2003 as per Annex 1;**
 - (ii) making the Licensing and Safety Committee responsible for all the functions required to be discharged by a Licensing Committee;**
 - (iii) adopting as the Council's scheme of delegation for the Director of Environment, as per Annex 2;**

- (iv) establishing a Licensing Committee of 12 members (no substitutes), and proportionally represented by 9 Conservative, 2 Labour and 1 Independent;
 - (v) reducing the Planning and Highways Committee to 10 Members (plus substitutes), proportionally represented by 9 Conservative, 1 Labour
- (b) Council Procedure Rule 9 of the Constitution be amended to allow the Licensing and Safety Committee to determine its own public speaking arrangements;
 - (c) Council Procedure Rule 17 (Reference to Council) be amended to preclude the referral of matters to Council from the Licensing and Safety Committee, including its Sub Committees and Panels, and the Planning and Highways Committee;
 - (d) the Rules of Debate be amended so that they do not apply to the Licensing and Safety Committee and its Licensing Sub Committees when they are conducting a 'hearing';

3 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 3.1 Comments are incorporated in the report.

Borough Finance Officer

- 3.2 The new licensing laws have major cost implications to the Council that will need to be addressed within the budget preparation process for 2004/05. The proposed changes in relation to planning are intended to make the service more efficient and this in turn could attract funding through the Planning Delivery Grant.

Access Implications

- 3.2 There are no access implications arising from this report.

4 SUPPORTING INFORMATION

Licensing function

- 4.1 The Licensing Bill received Royal Assent on 10 July 2003. This Act establishes the basic framework for the new provisions with powers for the Secretary of State to make Regulations. One particular set of regulations still to be made is in respect of how the Council conducts the decision-making process. In the meantime the Council has to develop its Statement of Licensing Policy. This will need to be in place by 1 April 2004. There is a statutory framework to work within that includes the need for consultation. In order for a draft to be developed, it needs Member input and this has come through the Licensing and Safety Committee to date but needs to become the responsibility of a properly constituted Licensing Committee. An example of what is required in such a policy is due to be published by the autumn. The work plan allows for the necessary process to be completed ready for the Statement of Licensing Policy to formally adopted in March.

- 4.2 The existing functions of the Licensing and Safety Committee comprise some functions which by law must be discharged by the Council or one of its committees (rather than the Executive) or officers. It also includes some functions which are a matter of "local choice" i.e. each Local Authority may determine whether such functions are determined by Council/Committee or by the Executive. The existing functions of the Committee are set out in Annexe 1 and it is proposed that the functions be changed as highlighted in the report. It is also proposed that a number of the local choice functions should transfer to the Executive. If the Leader so specifies, such functions could become the responsibility of the Executive Member for Public & Environmental Services and Parish Liaison. The proposals would leave the Licensing and Safety Committee with a more clearly defined core business.
- 4.3 We expect an amendment to the Function and Responsibility Regulations to include all the functions under the Licensing Act 2003 (with the exception of the determination of the Statement of Local Licensing Policy, which might be a 'local choice' function). However, in advance of any changes to these regulations, the Council will need to insert a provision into Part 3 of the Constitution, which designates the Licensing and Safety Committee as the Licensing Committee for the purposes of the Licensing Act 2003. It will need to make the Licensing and Safety Committee responsible for functions under the Licensing Act 2003, including the determination of the Statement of Licensing Policy.

Licensing Committee

- 4.4 Under the new provisions the Council is legally required to set up a committee of not less than 10 but not more than 15 Members. The reason that these numbers are specified is because the Council has to be able to draw upon 3 Panel Members, potentially at short notice, who are available and able to run a Licensing Panel. At this stage and in the absence of the Regulations, the proposal is to expand the Licensing and Safety Committee initially from 6 to 12 Members with no substitutes because of the legal requirements. It is envisaged that four Members of the Licensing Committee will be specifically trained to be able to act in the capacity of Chairman of the Panel.
- 4.5 There will be two roles for Members of a Licensing Panel. One Member will have to be the Chairman and with legal support ensure that the business is conducted properly. The other Members would work in support of the Chairman and all have to be able to question and analyse the evidence to come up with reasoned decisions. All decisions are open to challenge in the Courts. Members with an interest will not be able to sit on the Panel.

Ward Members

- 4.6 Being the Ward Member may be considered to fall within the definition of an interest. Under the Members' Code of Conduct adopted by the Council, Members are only required to withdraw if they have a "prejudicial interest" in the matter under consideration. To constitute a prejudicial interest the matter must fall within the scope of "personal interests" as defined by the Code. Merely living in the same ward as licensed premises would not *per se* constitute a personal interest (although the position might be different if the licensed were in close proximity to the Members home or the home of a relative or friend).
- 4.7 Under the Licensing Act the secretary of State has power to make regulations concerning the proceedings of Licensing Committees and regulations may disqualify ward Members from participation.

- 4.8 The Council has adopted a Members' Protocol for Planning matters and the Protocol indicates that Members who have committed themselves to voting in a particular way in advance of the committee meeting or who have campaigned for or against a particular application should not participate at committee. These provisions arise from general principles of public law/advice from the Ombudsman on good administrative practice and therefore have similar application to licensing applications.

Statement of Licensing Policy

- 4.9 The Licensing Committee will be responsible for ensuring that the Statement of Licensing Policy is maintained and appropriate to local need. The new expanded committee would be required to work through the new legislative requirements and make further reports to the Executive and/or Council as the detail is known. This may well include a recommendation to change the size of the committee. Regardless of these new responsibilities the Council will still be responsible for the other Licensing functions such as hackney carriages, pet shops, animal boarding and breeding establishments, riding establishments, butchers shops etc. The frequency of the main committee will be largely as at present. In addition from time to time there will be the need to set up a separate appeals sub-committee for reasons as mentioned below.
- 4.10 The first major task for the Licensing Committee will be to agree the draft Statement of Licensing Policy for the purpose of consultation and to recommend to Council its adoption. As indicated this is a very important document. It must form the basis for all decision making and its contents can be challenged at any time. Whilst a draft is being produced for Member consideration the guidance has still not been published and the timeframe is very tight.

Licensing & Representations Panel

- 4.11 In establishing the new arrangements the review provides the opportunity to set up a Licensing Appeals and Representation Panel. This panel would be responsible for hearing appeals where there is either no statutory right of appeal e.g. against the refusal to grant street traders consents or those where the Licensing and Safety Committee provide a right of hearing e.g. certain taxi related matters. Such a panel is necessary to avoid calls for judicial review. This panel does not consider appeals in respect of Licence issues regulated by the Licensing Act. The right of appeal is to the Magistrates Court and the Court have the ability to award costs for or against the Council.
- 4.12 In order to enable the Committee to perform its functions in a competent manner and thereby minimise the risk of successful challenge, an ongoing Member training programme is envisaged as being essential. Discussions have already taken place with a view to establishing the training programme to ensure all Members of the Committee have, and maintain, the necessary competence to perform the duties required.

Development Control

- 4.13 There is no intention to change the functions of the Planning and Highways Committee. However, reflecting the need to be able to respond to the licensing proposals and because of the time demands of both Committees, it is proposed to reduce its size from 18 to 10 Members (with substitutes). This reduction would address one of the recommendations of the Best Value Review.

- 4.14 As with licensing, development control has to be exercised having regard to Borough wide policies. Members of the Planning and Highways Committee are sitting almost in a quasi-judicial capacity when reaching decisions on planning applications. Members need to be supported by an ongoing training and development programme to help ensure the highest level of Member competency, consistency in decisions and ultimately quality development. Plans are well advanced to introduce such a programme for Borough Members. The intention is to include for sessions for both officers and Members at the same time in order to develop better working relationships and a greater appreciation of each others roles and problems.
- 4.15 It is also proposed that the Scheme of Delegation in relation to planning matters change in two ways. There is a need to make it more effective and responsive to operational need. Annexe 2 sets out the current scheme of delegation and the proposed changes are highlighted in bold. The majority of these proposals are largely technical, changing the relationship between the department and the Borough Solicitor so that the planning officers are empowered to do more of the work in house, in liaison with legal services only as may be required. This brings the planning function in line with the other regulatory functions within the department.
- 4.16 The second area of change in the scheme of delegation is in respect of the determination of planning matters. The intention is to ensure better clarity for officers and Members to help ensure speedier decisions and enable us to meet our national targets and our Best Value inspection commitments in respect of speed of performance. The main changes are;
- (a) New matters for Committee consideration
- applications made on behalf of members of Council or council staff;
 - applications if which approved would be contrary to policy.
 - applications submitted by or on behalf of the Borough Council or in relation to land or property owned or managed by the Council.
 - the discharge of conditions in relation to applications submitted by or on behalf of the Borough Council or in relation to land or property owned or managed by the Council.
 - the discharge of conditions in relation to applications made by or on behalf of members of Council or council staff;
- (b) New delegated powers for officers
- authority to instigate legal and enforcement proceedings in liaison with the Chairman and Ward Members in respect of contraventions of planning legislation
 - a change in the threshold objections necessary before the matter has to be referred to Committee (from more than 1 to more than 3).
- 4.15 The intention with these changes is to give greater clarity to the existing scheme to ensure that the Committee takes the most appropriate decisions and that transparency of process is assured. The two main changes in relation to the powers of officers are to ensure that where there are minor contraventions then the officers can get on and deal with them as quickly as possible. The other change is intended to reduce the number of minor applications that are coming to Committee only for the officer recommendation to be approved or over turned on weak ground only to be lost at appeal. In the last 12 months there have been 36 appeals. A total of 18 have been allowed including 11 where Members overturned the officer recommendation and 5 where the officer refused the application. Of those supported at appeal only 5 were Member decisions. Costs have been awarded

against the Council twice during the period. The proposed changes should result in a general improvement in performance and provide Members more time to consider the details of the more complex proposals. The right for any single Member of the Council to request that an application should be determined by the Planning and Highways Committee remains provided that the request is supported in writing by a valid planning reason and ratified by the Head of Planning and Building Control.

- 4.16 Last year the government changed the target for the number of delegations from 80% to 90% and we are currently not meeting this target.. The adjustments proposed would remove some applications from the delegation scheme and the potential negative impact on our performance has to be considered. It is considered that the proposal to extend the delegation in other areas will address this and we should be able to achieve the 90% target as required. In terms of the targets for the time taken to determine planning applications the Council is falling short of the Government targets, particularly in relation to major and minor applications categories. Changes to the scheme of delegation as outlined above will result in a considerable improvement. In addition we are continuing to review existing processes and procedures and introducing major improvements to the planning IT system. There is also a review of the planning structure and organisation underway. All changes proposed are intended to help us achieve our performance targets and further improve the quality of service delivery.

Member Representation

- 4.17 In order to ensure transparency and ensure that there are no probity issues it is not considered advisable for Members to sit on both Planning and Licensing Committees, even though in theory a Licensing Committee seems likely to be given the ability in statute to determine a planning application.
- 4.18 The proposed reduction in the Planning and Highway Committee will result in there no longer being a planning member for each ward and this effectively changes of the role of the committee Members. Clearly any Ward Member is able to speak to any application but can not be part of the decision process unless a member of the Planning and Highways Committee. In such circumstances all recommendations will in future be moved by the Chairman This is a similar arrangement employed in other authorities. Further, it is considered best practice as it helps avoid potentially justifiable conflict of interest allegations.

Public Speaking

- 4.19 The new licensing requirements provide applicants and the public with the right of representation.
- 4.20 In addition, the Best Value Improvement Plan for Development Control included a commitment to consider the need for introducing a scheme of public speaking at Committee. Where such rights are given they need to be clearly defined and the process carefully controlled to avoid abuse. It should be noted that unless an application comes to Committee there is no right to communicate other than by letter and visiting the office. The Planning and Highways Committee could be tasked with looking at the various options and reporting back to a future meeting of the Constitution Review Group.
- 4.21 The Constitution currently only extends public speaking to Council meetings. A change would be necessary to allow the arrangements for the Licensing Committee to be established. It is envisaged that unless there is a prescribed process, that the

Committee(s) be given authority to determine its own rules for ultimate incorporation in the Constitution via the Constitution Review Group.

Reference Up

- 4.23 Council Procedure Rule 17 enabling committees or sub committees to refer matters to the Council should not apply to decisions being taken by the Licensing Committee or its Panels in relation to particular licensing applications. This is because there is a statutory framework to work within that includes for the right of appeal to the Courts and time frames that must be complied with. In addition the Council in practice could not sit in the form of a hearing as required. This argument also applies to some degree to planning applications and as the intention is to ensure that all Members are competent in their role it could be argued that it is inappropriate for the Council (which would include 'untrained' Members) to determine such applications

Rules of Debate

- 4.24 The rules of debate (Council Procedure Rule 13) regarding motions, amendments etc. apply to Council and its committees. We will need to amend Procedure Rule 24 (Application to Committees and Sub-Committees) to disapply the rules of debate to the Licensing Committee and its Licensing Panels when they are in 'hearing' mode, because such rules are not appropriate to a hearing.

Sub Committee Arrangements

- 4.25 Until the Regulations are published in relation to the Licensing Committee it is not known how a Licensing Panel has to be set up. A further report may be necessary to address any arising issues.

Councillor Bob Wade
Chairman

Background Papers

Bracknell Forest Borough Council – Constitution
Development Control Best Value Performance Plan
Licensing Act 2003

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1. Responsibility for Local Choice Functions.

The following table shows the allocation of responsibility in Bracknell Forest for the local choice functions.

	Functions	Responsible Body	Delegation of Functions
1	<p>All functions under Local Act legislation other than the following sections of the Berkshire Act 1986:</p> <p>Section 14 – Prohibition of parking in front gardens</p> <p>Section 18 – Extension of powers to provide public conveniences</p> <p>Section 19 – Registration of hairdressers and barbers</p> <p>Section 21 – Control of dust from building operations</p> <p>Section 22 – Escape of gas, fumes, etc from chimneys</p> <p>Section 39 – Defective electrical installations (a health and safety issue)</p> <p>Section 40 – Fire alarm systems (a health and safety issue)</p> <p>Section 43 – Stacks of inflammable substances (a health and safety issue)</p>	<p>Executive</p> <p>Licensing & Safety Committee Executive</p> <p>Licensing & Safety Committee Executive</p> <p>Licensing & Safety Committee</p> <p>Licensing & Safety Committee Executive</p> <p>Licensing & Safety Committee Executive</p> <p>Licensing & Safety Committee</p> <p>Licensing & Safety Committee</p> <p>Licensing & Safety Committee</p>	<p>Operational decisions are delegated to Officers in accordance with the Scheme of Delegation.</p>
2	<p>Arrangements under Section 20 of the Police Act 1996</p>	<p>Council</p>	<p>None</p>
3	<p>Appointment to Police Authorities</p>	<p>Council</p>	<p>None</p>
4	<p>Best Value reviews:</p> <ul style="list-style-type: none"> • Review Programme • Scope of Reviews • Consideration of Reviews • Approval of Review Report and Improvement Programme 	<p>Executive</p> <p>Executive</p> <p>Executive/ Scrutiny Commission</p> <p>Executive</p>	<p>None</p> <p>Best Value reviews will be conducted by officers</p>
5	<p>Functions relating to contaminated land</p>	<p>Licensing & Safety Committee Executive</p>	<p>Operational decisions are delegated to Officers in accordance with Scheme of Delegation</p>

Functions	Responsible Body	Delegation of Functions
6 Functions relating to control of pollution or management of air quality	Licensing & Safety Committee Executive	Operational decisions are delegated to Officers in accordance with Scheme of Delegation
7 Service of abatement notice in respect of statutory nuisance	Executive	Operational decisions are delegated to Officers in accordance with Scheme of Delegation
8 Inspection of area to detect statutory nuisance	Executive	Operational decisions are delegated to Officers in accordance with Scheme of Delegation
9 Investigation of any complaint of any statutory nuisance	Executive	Operational decisions are delegated to Officers in accordance with Scheme of Delegation
10 Passing of resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the Borough.	Council	On the recommendation of the Licensing & Safety Committee
11 Obtaining of information under Sections 330 of the Town & Country Planning 1990 and Section 16 of the Local Government Act (Miscellaneous Provisions) 1976 <ul style="list-style-type: none"> • Where required for the discharge of Executive functions • Where required for discharge of non- Executive functions 	Executive Council	Operational decisions are delegated to Officers in accordance with Scheme of Delegation
12 Agreement for the execution of Highway works	Executive	Operational decisions are delegated to Officers in accordance with Scheme of Delegation
13 Appointments/revocation of appointments to external offices/bodies: <ul style="list-style-type: none"> • In connection with functions which are the sole responsibility of the Executive • In respect of functions which are not the sole responsibility of the Executive 	Executive Council	- A Committee will be established to appoint LEA Governors
14 Determination of an appeal against any decision by or on behalf of the Authority	Council/Appeals Committee	Appointment of Appeal Panels/ Review Boards and general arrangements dealing with appeals is delegated to Officers in accordance with the Scheme of Delegation
15 Appointment of Review Boards	Council	
16 Making arrangements in respect of school exclusion/admission appeals	Council	
17 Adoption or approval of plans/strategies which do not form part of the Council's budget and policy framework	Council Executive	None

E. DIRECTOR OF ENVIRONMENT

The Director of Environment is authorised to exercise the following functions of the Council:-

General

1. To waive fees for services (in full or in part) in the interests of public health **or safety where there is financial hardship.**
2. Appoint suitably qualified officers and others to positions and/or to act in particular capacities and/or to exercise statutory powers under all relevant legislation including:-
 - Rent Officers
 - Health & Safety Inspectors
 - Food Safety Inspectors
 - Public Analysts
 - Coroner
 - Agricultural Analysts and Deputy Agricultural Analysts
 - Veterinary Surgeons (for purposes of Animal Welfare legislation)
 - Inspectors for the purposes of Explosives Legislation
 - **Inspectors for the purposes of entry and inspection of all legislative matters falling to the Directorate to enforce.**
3. Respond to consultations from Government Departments, statutory undertakers and other authorities where there is a no major impact on the Borough.
4. Appoint independent surveyors in the event of a Party Wall dispute where the parties' surveyors are unable to agree on a third surveyor. (E)
5. Request the Traffic Commissioners to make, vary or revoke traffic regulation conditions affecting local services or to hold an Inquiry affecting local services or to hold an Inquiry prior to determination of such conditions. (E)
6. Enter into Public Path Creation Agreements, except where a capital payment by the Council is involved. (NE)
7. **Instruct the Borough Solicitor as appropriate (including the authorisation of criminal and civil proceedings and the conclusion of agreements).**

General Enforcement

1. Appoint and authorise persons to exercise powers of entry, inspection, surveying, taking samples and seizing goods and articles and to exercise enforcement powers under all relevant legislative provisions.
2. Serve Notices (not under seal) and Orders; obtaining of warrants; arrange for the carrying out of works in default and the recovery of costs as allowed for by statute.
3. **Authorise the institution of** proceedings in respect of any criminal offence including the issue formal cautions for offences under relevant legislation.
4. Serve Notices requiring information as to interests in land.
5. Exercise the Council's powers and discharge the Council's duties in relation to:-
 - Bracknell Market (not including the setting of stall rentals or the letting of a contract for the operation of the market); (E)
 - Clean air and air quality; (E)
 - Dangerous structures, protection of buildings, ruinous and dilapidated buildings and neglected sites (E)
 - Emergency planning duties (save for approval of the Emergency Plan); (E)

- Food Safety; (E)
- Highways inc New Roads and Streetworks Act; (E)
- Highway permits and licences; (NE)
- Land and blocked drainage systems (E)
- Public Health; (E)
- Grounds maintenance (~~excluding the letting of contracts~~) other than countryside maintenance; (E)
- Health and Safety; (NE)
- Management of the public weighbridge and Civic Amenity Site; (E)
- Part IIA of the Environmental Protection Act 1990 (Contaminated Land); (NE)
- Part VI Housing Act 1985 (repair notices) (E)
- Part IX Housing Act 1985 (preliminary action in respect of slum clearance)
- Part X Housing Act 1985 (overcrowding) (E)
- Part XI Housing Act 1985 (houses in multiple occupation) (E)
- Pest control (not including the setting of charges); (E)
- Pollution Control and Statutory Nuisances; (E)
- Public conveniences, cesspools and private sewers (excluding the setting of standard charges); (E)
- Recycling (excluding approval of recycling plans); (E)
- Refuse, recycling, waste collection and disposal including the management of the refuse disposal contracts; (E)
- Securing the provision and maintenance of adequate means of escape from fire; (E)
- Street cleansing (but excluding the letting of street cleansing contracts); (E)
- Street cleansing and litter (other than the designation of litter control areas); (E)
- The approval of grants for the renewal or improvement of housing. (E)
- The legislation relating to explosives; (E)
- The removal and disposal of abandoned vehicles; (E)
- Weights and measures, fair trading, trade descriptions, consumer safety and trading standards. (E)

Development Control

1. Determine applications for planning permission, **Certificates of Lawful Existing Use, Certificates of Proposed Use or Development**, listed building consent, conservation area consent, hazardous substances consent and advertisement consent (including those where a planning obligation or highways agreement is required) but with the following exceptions (NE) :-
 - (a) applications made by Members of the Council or staff;
 - (b) applications which any single Member of the Council expressly requests should be determined by the Planning and Highways Committee **provided that the request is supported in writing by a valid planning reason and**
 - (c) applications attracting valid planning objections before the delegated decision is made, ~~single household or organisation~~ **where objections arise from not more than three households and/or organisations,**

may be determined by the Director of Environment following reference to the Chairman of the Planning & Highways Committee and ward councillors;

(d) applications which if approved would be contrary to the Development Plan; or

(e) applications submitted by or on behalf of the Borough Council or in relation land or property owned or managed by the Council.

2. Decline to determine a planning application submitted within two years of the Secretary of State refusing or dismissing an appeal against refusal of a similar application. (NE)
3. Discharge the functions of the Council in relation to environmental impact assessments. (NE)
4. Undertake consultations and publicity, issue notices, directions, determinations, permissions, consents, approvals and certificates in respect of all applications for planning permission, listed building consent, hazardous substances consent, conservation area consent, advertisement consent, including those matters set out in the Town & Country Planning (General Development Procedure) Order 1995. (NE)
5. Determine whether or not to make a direction in respect of minerals workings pursuant to the Town & Country Planning (General Permitted Development) Order 1995. (NE)
6. Determine whether the Council's prior approval is required for carrying out developments as set out in Schedule 2 of the Town & Country Planning (General Permitted Development) Order 1995. (NE)
7. Authorise the Borough Solicitor **in consultation with the Chairman of the Planning and Highways Committee** to serve Enforcement Notices, Listed Building Enforcement Notices and Stop Notices. ~~where an application for planning permission, Listed Building Consent or Conservation Area Consent has been refused by the Planning and Highways Committee~~ and to withdraw Enforcement Notices or to waive or relax any requirements of an Enforcement Notice. (NE)
8. Serve planning contravention notices and breach of condition notices. (NE)
9. Authorise the Borough Solicitor to instigate proceedings for an injunction pursuant to Section 187B of the Town & Country Planning Act 1990. (NE)
- 10. Authorise the Borough Solicitor to instigate and pursue a prosecution in respect of any offence under Planning Legislation. (NE)**
11. Serve notices pursuant to Section 215 of the Town & Country Planning Act 1990 (power to require proper maintenance of land). (NE)
12. Authorise the Borough Solicitor to serve notices requiring the discontinuance of the display of advertisements or the use of a site for the display of advertisements. (NE)

- ~~13. Authorise the Borough Solicitor to institute proceedings under Section 224 of the Town & Country Planning Act 1990 (power to remove unauthorised advertisements).~~
14. Remove or obliterate placards and posters pursuant to Section 225 of the Town & Country Planning Act 1990. (NE)
15. Agree minor variations to planning obligations agreed by the Planning and Highways Committee not involving a reduction in the overall level of financial contributions or deletion of or addition to planning obligations. (NE)
16. Determine requests and applications to modify or discharge planning agreements and obligations except where (NE) :
 - a) a duly made objection has been received;
 - b) it is concerned with the provision of, or payments towards the provision of, infrastructure and facilities;
 - c) applications submitted or on behalf of the Council or in relation to land or property owned or managed by the Council;**
 - d) applications made by or on behalf of Members of the Council or Council staff.**
17. Refuse applications for listed building grants which do not comply with the requirements of the Council's policy for such grants. (NE)
- ~~18. Authorise the Borough Solicitor to serve Building Preservation Notices. (NE)~~
19. Apply for buildings to be listed (unless there is significant public interest).
20. Negotiate and conclude agreements under Section 106 of the Town & Country Planning Act 1990 in respect of developments to be approved under delegated powers. (NE)
21. Relax, delete or vary conditions attached to permissions and consents where previously agreed under delegated powers. (NE)
22. Prepare and present the Council's case to the Secretary of State in respect of any statutory appeal under planning legislation. (NE)
23. Determine whether variations and alterations to plans previously approved under planning legislation are minor and if so, to determine issues arising from such variations and alterations, in accordance with Minute 100 of Development Committee 28 May 1992. (NE)

Trees and Hedges

1. Make and serve Tree Preservation Orders. (NE)
2. Confirm tree preservation orders where no objection has been received. (NE)
3. Determine applications to carry out works to trees included in a tree preservation order. (NE)

4. ~~Authorise the Borough Solicitor to~~ serve notices requiring replacement of trees. (NE)
5. Take all steps including ~~authorising the Borough Solicitor to serve~~ **servicing** notices under Section 23 of the Local Government (Miscellaneous Provisions) Act 1976 in relation to dangerous trees. (NE)
6. Respond to hedgerow removal notices, including ~~authorising the Borough Solicitor to serve~~ **the service of Hedgerow Retention Notices and notices requiring the replacement of hedgerows.** (NE)
7. ~~Responding to~~ notices regarding works to trees in Conservation Areas. (NE)

Building Regulations

1. Take all action under the Building Act 1984 and the Building Regulations in respect of applications, Notices served or received, Relaxations and Appeals. (E)
2. Serve Notices in respect of Contraventions of the Building Act 1984 and the Building Regulations. (E)

Maintenance of Land

1. Take action under Part III Berkshire Act 1986 ("Amenities and Municipal Property") in respect of land other than the designation of areas to which any of the provisions are to apply. (NE)

Highways

1. Undertake works of maintenance or improvement or to arrange for such works to be undertaken in relation to public highways maintained at the public expense in accordance with revenue budgets. (E)
2. Seek disclosure of criminal records under the Road Traffic Acts. (E)
3. Authorise the Borough Solicitor to enter into Agreements with Landowners for the construction and adoption of roads and footways under Section 38 of the Highways Act 1980. (E)
4. Authorise the Borough Solicitor to respond to Notices under Section 37 of the Highways Act 1980 proposing that the Council adopt roads and footways and to ~~authorise the Borough Solicitor to take Court action~~ instigate legal action. (E)
5. To enter into Agreements in respect of walkways under Section 35 of the Highways Act 1980. (E)
6. Authorise the Borough Solicitor to enter into Agreements under Section 278 of the Highways Act 1980 where the works to the highway are required as part of a planning consent or have been approved by the Planning and Highways Committee. (E)

7. Authorise the Borough Solicitor to enter into agreements with landowners for the dedication of land required for the widening of highways under Section 72 of the Highways Act 1980, where the widening of the highway is part of a scheme required as part of a planning consent or has been approved by the Planning and Highways Committee. (E)
8. Exercise the Council's other functions under Part V of the Highways Act 1980 ("improvement of highways") other than the construction of road humps and the power to carry out traffic calming works. (E)
9. Exercise the Councils' functions under Part IX of the Highways Act 1980 ("lawful and unlawful interference with highways and streets"). (E)
10. Exercise the Council's functions in relation to street works under the New Roads and Street Works Act 1991. **(Section 50 NE, otherwise E)**
11. ~~Authorise the Borough Solicitor to serve notices under the Advanced Payments Code of the Highways Act 1980.~~ (E)
12. Exercise the Council's functions in relation to street naming and renaming, numbering and renumbering of streets in accordance with the procedure agreed by the Planning & Transportation Committee - 15.10.1998. (E)
13. Enter into agreements with or issue consents for statutory undertakers and telecommunications operators to execute works to the highway or to lay apparatus and cables in, under, over or upon the highway. (E)
14. Serve notices on owners of private highways requiring them to bring them into repair. (E)
15. Carry out works in default of owners failing to comply with a Notice requiring a private highway to be brought into repair and to recover the costs arising. (E)
16. Execute urgent repairs to private streets and to recover the costs arising. (E)
17. ~~Authorise the Borough Solicitor to respond to notices under Section 56 of the Highways Act 1980.~~ (E)
18. ~~Authorise the Borough Solicitor to make orders to allow for excavation or other engineering operations required for the purposes of agriculture, under Section 135 of the Highways Act 1980.~~ (NE)
19. ~~Authorise the Borough Solicitor to recover from the person responsible the costs of making good damage caused to a grass verge or footway of a highway by any person carrying on building operations or delivering goods to premises in the course of trade, under Section 9 of the Berkshire Act 1986.~~ (E)
20. ~~Authorise the Borough Solicitor to enter into agreements with adjacent highway authorities or the Secretary of State under Sections 4 and 8 of the Highways Act 1980.~~ (E)
21. Authorise the Borough Solicitor to make applications to the County Court for an order vesting former highway land in the Highway Authority under Section 7 of the Berkshire Act 1986. (E)

22. Take action including ~~authorising the Borough Solicitor to serve~~ **service of** Notices, Orders or authorise the Borough Solicitor to commence court proceedings to deal with unlawful works, alterations to, damage to, obstructions of, danger or annoyance to users of highways and streets, interference with or encroachment onto the highway. (E)
23. Take action including ~~authorising the Borough Solicitor to make~~ **making** Orders and to enter into Agreements to stop up private accesses to premises. (E)
24. Levy charges for damage to street furniture and emergency call outs as and when required and to ~~authorise the Borough Solicitor to~~ recover such charges. (E)
25. Serve Notices under Highways Act 1980 on the occupiers of premises who habitually take vehicles over footways where a properly constructed crossing is not provided and is required. (E)
26. ~~Authorise the Borough Solicitor to~~ enter into agreements to licence the erection of structures on the highway in accordance with the Highways Act 1980. (NE)
27. ~~Authorise the Borough Solicitor to~~ enter into agreements under Section 115E of the Highways Act 1980. (E)
28. In consultation with the ~~Chairman~~ **the relevant Executive Member**, ward councillors, the Police and the parish council, determine applications for consent to hold social events on the highway, and ~~to authorise the Borough Solicitor to~~ make any necessary orders. (E)
29. ~~Authorise the Borough Solicitor to~~ make temporary orders and notices for traffic management under Section 14 of the Road Traffic Regulation Act 1984. (E)
30. Approve the temporary direction sign for local, major and national events and functions and to erect or amend direction signing, traffic signs and road markings in accordance with the Traffic Signs, Regulations and General Directions 1994. (E)
31. Determine applications for the installation of vehicle crossovers under the Highways Act 1980. (E)
32. Approve traffic management schemes and minor road improvements to a maximum of £50,000 per scheme provided that ward councillors have been consulted and do not object and provision has been made in the appropriate budget. (E)
33. Approve traffic management schemes and minor road improvements where required urgently because road safety is concerned, subject to approved budgetary provision. (E)
34. ~~Authorise the Borough Solicitor to~~ make any necessary Traffic Orders in respect of traffic management schemes to be implemented under delegated

powers and to determine the Council's response to any objections received to such orders. (E)

35. Approve minor schemes submitted by other highway authorities for traffic management orders within the Borough. (E)
36. ~~Exercise~~ **Fulfil** the Council's functions relating to cycletracks. (E)

Street Lighting

1. Approve proposals for fixing street lighting wall brackets to buildings pursuant to Section 45 of the Public Health Act 1961. (E)
2. Adopt street lighting prior to adopting streets by the Council. (E)
3. Determine applications for attachments to lamp standards and balance across the public highway including ~~authorising the Borough Solicitor to enter~~ **entering** into any necessary agreements relating to such applications. (E)

Parking and Unloading

1. ~~Exercise~~ **Undertake all** the Council's functions relating to car parks including ~~authorising the Borough Solicitor to enter~~ **entering** into agreements for car parking spaces. (E)
2. Determine applications for disabled persons parking places which meet the Council's criteria and ~~to authorise the Borough Solicitor~~ to make the necessary Order. (E)
3. Waive ~~excess parking meter~~ charges where justified. (E)
4. Approve the revocation of disabled persons parking places which are no longer required where the revocation is unopposed and ~~to authorise the Borough Solicitor~~ to make any necessary order. (E)
5. ~~Authorise the Borough Solicitor to~~ give notice of proposals to make traffic orders in respect of any approved scheme and to authorise the Borough Solicitor to make such traffic orders where no objection has been received. (E)
6. ~~Authorise the Borough Solicitor to~~ make traffic orders to enable minor amendments to be made to waiting and loading restriction orders including determining the response of the Council to any objections received to the order. (E)
7. Exercise the functions of the Council relating to car and lorry parks, excepting the setting of charges. (E)

Licensing & Registration

1. Respond to applications for and lodge operators licences under the Goods & Vehicles (Licensing of Operators) Act 1995. (E)

2. Initiate the necessary action to designate additional streets for street trading purposes. (NE)
3. Seek the disclosure of criminal records in accordance with approved hackney carriage licensing procedures. (NE)
4. Approve applications in respect of prescribed processes. (NE)
5. Make objections or representations on application for the grant or renewal of club registration certificates or justices' licences. (E)
6. Object to the grant of bookmakers' permits and lodge objections to betting office licences. (E)
7. Give prior approval of industrial furnaces and heights of chimneys. (E)
8. **Other than licences under the Licensing Act 2003**, determine applications for permits, licences and the registration of premises (including the power to suspend and revoke where applicable). (NE)
9. **To undertake all functions under the Licensing Act 2003, except where:**
 - (a) **there is a requirement in the Licensing Act 2003, or regulations made thereunder, to the effect that a particular function may only be carried out by the Council, Licensing Committee or a sub committee of the Licensing Committee appointed pursuant to Section 9(1) of the Act;**
 - (b) **there is a provision in guidance issued by the secretary of State under section 182 of the Act which advises that a particular function should only be carried out by the Council, Licensing Committee or a sub committee of the Licensing Committee appointed pursuant to Section 9(1) of the Act; or**
 - (c) **there is a provision elsewhere in this Constitution which requires that a particular function is reserved for the Council. Licensing Committee or a sub committee of the Licensing Committee appointed pursuant to Section 9(1) of the Act.**

Public Health

1. Make arrangements for the disposal of the dead. (E)
2. Arrange for the removal to suitable premises, of persons in need of care and attention. (E)
3. Exercise the Council's powers and duties relating to cemeteries and the crematorium including granting exclusive rights of burial and the Council's powers and duties in relation to closed churchyards. (E)
4. Take all necessary action with regard to notifiable diseases or food poisoning. (E)
5. Take all necessary action in relation to water quality. (E)
6. Take action under Part IV Berkshire Act 1986 (Miscellaneous powers relating to public health).

7. Sign certificates in respect of the export of food products. (E)
8. Seize dogs and take appropriate action relating to their disposal. (E)

Health and Safety

1. Agree to transfer of premises to and from the Health and Safety Executive. (E)
2. Make arrangements for the promotion of safety in the home. (E)

Landlord and Tenant

1. Grant, terminate or refuse any licence, wayleave, easement or lease of sites for use by statutory undertakers, public utilities, cable and telecommunication operators. (E)
2. Within revenue or capital estimates, carry out works of general maintenance in respect of property owned leased or occupied by the Council. (E)
3. Determine rent reviews of existing leases (rentals of £50,000 or more to be reported to an Executive Member for information). (E)
4. Approve terms for the grant by the Council of any licence, wayleave, easement over land and buildings for any purpose where no security of tenure is to be obtained and the length of term does not exceed 5 years. (E)
5. Grant or renew leases or underleases for commercial and residential properties (subject to prior consultation with the Director of Social Services and Housing in respect of properties comprised within the Housing Revenue Account and with rentals of £50,000 or more to be reported to an Executive Member for information). (E)
6. Acquire freehold interests in land, subject to the acquisition having been previously agreed in principle by or on behalf of the Council or Executive and the consideration not exceeding £500,000. (E)
7. Approve the assignment or sub-letting of existing leases and underleases. (E)
8. Agree to amendments to user and other clauses in the Council's standard leases. (E)
9. Determine requests by tenants, lessees or licensees of properties owned by the Council for consent to make improvements or alterations, subject to compliance with any applicable statutory requirements (subject to prior consultation with the Director of Social Services and Housing in respect of properties comprised within the Housing Revenue Account). (E)
10. Grant rights of way with or without vehicles over Council owned land. (E)
11. Purchase, by agreement or otherwise (E):
 - (i) properties included in compulsory purchase orders,

(ii) properties specified in valid blight notices served on the Council,
subject to budget provision having been made for such purposes

12. Agree all payments in connection with the acquisition of land under compulsory purchase powers including home loss and disturbance payments. (E)
13. Submit planning applications on behalf of the Council. (E)
14. Determine requests for deeds of variation, deeds of covenant, deeds of waiver, deeds of release and rights of pre-emption, at a consideration if appropriate. (E)
15. Dispose of the Council's interest in amenity land not exceeding 0.1 hectares. (E)
16. Dispose of the Council's interest in surplus land not exceeding 0.2 hectares subject to the disposal having been previously agreed in principle by or on behalf of the Council or Executive. (E)
17. Agree terms to dispose of the Council's freehold interest to long leaseholders of residential property. (E)
18. Accept tenders or terms for leases in all cases where the property is held pending redevelopment. (E)
19. Authorise the service of Notices on Tenants in accordance with the Landlord & Tenant Act 1954 and to deal with any consequential matters including agreeing terms for a new tenancy, settling claims for statutory compensation in appropriate cases. (E)
20. Serve notices terminating other agreements in respect of land including residential properties (subject to the prior consultation with the Director of Social Services and Housing in the case of properties comprised within the Housing Revenue Account). (E)
21. Approve terms and conditions for the taking by the Council of any licence, wayleave, easement, tenancy, lease of land or building for any purpose subject to the acquisition of the interest having been previously agreed in principle by or on behalf of the Council or the Executive, the period not exceeding five years and the rental or other consideration not exceeding £10,000 per annum. (E)
22. Secure the repair and maintenance of land and buildings in the ownership of the Council not comprised within the Housing Revenue Account. (E)
23. Manage and secure the repair and maintenance of the Council's vehicles. (E)
24. Agree amendments to the rating valuation List. (E)