



**Governance and Audit Committee
29 November 2017**

**Proposed Changes to Parts 3.2 and 9 of the
Constitution**

Purpose of report

To propose changes to Part 3.2 of the Constitution in respect of specific delegations for Planning Enforcement Activity and Part 9 in respect of the appeal process after initial assessment for councillor Code of Conduct complaints.

1.0 Part 3.2 Changes (Scheme of Delegation)

- 1.1 Following the creation of the post of Senior Planning Enforcement Officer last year, the current post-holder has taken the opportunity to review the working practices of the team and the powers under the Scheme of Delegation to ensure that these are appropriate to the needs of the council and community.
- 1.2 Appendix A presents the result of this review with proposed changes for councillors' consideration. These changes are largely for clarity or to reference the new post as outlined in the appendix.

2.0 Part 9 Changes (Procedure for the Assessment of Complaints Against Councillors)

- 2.1 The ability to appeal if the outcome of the initial assessment is referral for investigation was removed from the procedure by Council in April this year. The Joint Standards Complaints Committee will be reviewing the position in relation to appeals of the other two possible outcomes again at its meeting on 22nd November. (These were considered at the last meeting following comment by the council's legal advisors, LGSS.) This review has been prompted by comments made by Mr J Goolden, an external lawyer with significant experience of Code of Conduct matters. As part of his consideration of complaints as a Deputy Monitoring Officer for this council, he has also commented on this council's process and suggested that the council removes the appeal process for no or 'other action' at initial assessment.
- 2.2 The current process allows for appeals at initial assessment if the complainant or the councillor(s) complained about feels that:
 - a) the process outlined in this procedure has not been followed
 - b) the outcome proposed is considered inappropriate.
 - c) significant new evidence is available which has not been considered during the previous process.
 It should be noted that the complainant or councillor(s) complained about can refer the matter to the Local Government Ombudsman if they feel that the council's procedure has not been followed or if the outcome proposed is not considered appropriate.
- 2.3 It is believed that the purpose of the initial assessment stage was to allow Monitoring Officers to deal more quickly with less serious complaints. There has also been an increasing overall number (and complexity) of complaints (up from 5 in the first full year to 9 so far in 2017). Allowing for appeal at initial assessment adds to the burden of work on complaints-related matters for officers at a time of continuing constraints on public expenditure. In 26% of complaints considered so far, the outcome of the initial assessment has been appealed.

2.4 The JSCC will also be considering reducing the timescale for lodging an appeal. At present 20 working days is allowed for the appeal period. This too extends the period of uncertainty for the complainant or councillor(s) complained about. It is proposed to reduce this to 15 working days (to allow for holidays)

2.5 The JSCC will be considering the following changes to the procedure to remove the right of appeal at initial assessment and hearing stage and reduce the length of the appeal period as follows:

Stage 4 – Appeal

6.1 An appeal may be made where the complainant or councillor(s) complained about feels that:

- ~~a) the process outlined in this procedure has not been followed~~
- ~~b) the outcome proposed is considered inappropriate; or~~
- c) significant new evidence is available which has not been considered during the previous process.

Any such appeal should be made in writing (by letter or e-mail) to the Monitoring Officer within ~~20~~ 15 working days of the receipt of the notification of the relevant decision.

6.2 An appeal may not be made against an Initial Assessment decision to refer for further investigation as no finding has been made at this stage.

2.6 The outcome of the consideration by the Joint Standards Complaints Committee will be reported to the Governance and Audit Committee

3.0 Equality and diversity issues

3.1 There are no known negative equality and diversity issues arising from this paper.

4.0 Legal Implications

4.1 There are no known legal implications arising from this report.

5.0 Risk Management

5.1 Should any councillor or complainant be unhappy with the way the complaints procedure has been applied, they may make a complaint to the Local Government Ombudsman. It should be noted that the Ombudsman will generally only review whether the process has been correctly followed rather than whether the outcome is acceptable to the person complaining to them.

6.0 Resource and Financial Implications

6.1 The proposed change should reduce the number of appeal hearings required, which will reduce the requirement for related officer resources.

7.0 Constitutional Implications

7.1 As noted, any proposed changes to the Constitution will be have to been approved by (full) Council.

8.0 Implications for our Customers

8.1 The processing of appeals extends the overall time take to determine complaints and

can have a negative impact on the councillor seeking to clear their name or the complainant awaiting an outcome for their complaint.

9.0 Corporate Outcomes

9.1 The work reported here contributes to the Corporate Outcomes of Effective Management.


10.0 Recommendations

10.1 The Committee is asked to **resolve to recommend** to Council the changes proposed in Appendix A in relation to the Scheme of Delegation (Part 3.2)

(Reason: To ensure that the Planning Enforcement Team have the appropriate powers to undertake their role in protecting the community from unlawful planning development).

10.2 The Committee reviews the comments of the Joint Standards Complaints Committee in relation to the proposed changes to Part 9 of the Constitution and, if appropriate, resolves to recommend to Council the changes in paragraphs 2.4 & 2.5 of this report.

(Reason: To ensure that the procedure followed for Complaints against Councillors is proportionate and fair).

Legal	Power: Localism Act 2011				
	Other considerations: Parts 3.2 and 9 of the Constitution				
Background Papers:					
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Date: 17/11/17					
CFO		MO		CX 16/11/17	

Appendix A Scheme of Delegation Proposed Changes

	Enforcement		Comment/Reason for Change
5.	Institution of proceedings (prosecution or direct action) for failure to comply with an enforcement notice	Executive Director, HoPS, PDM in conjunction with LGSS Legal Service with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION. Notice of intention to take action to be given to Ward Members	Clarification of action
6.	Institution of legal proceedings under the s224 of the Town and Country Planning (Control of Advertisement) Regulations Act (including relating to fly posting.)	Executive Director, HoPS, PDM; in conjunction with LGSS Legal Service; with the ability to specify other officers (in addition to those shown) to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION. Notice of intention to take action to be given to Ward Members	Updated legal reference
7.	Service of Planning Contravention Notices, Breach of Condition Notices and Requisition for Information notices under pursuant to Section 330 Town and Country Planning Act 1990 and Section 16 Local Government (Miscellaneous Provisions) Act 1976	Executive Director; or HoPS, PDM; Senior Enforcement Officers and Senior Conservation Office; in conjunction with LGSS Legal Service; with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION Notice of intention to take action to be given to Ward Members.	PCNs and S330s are very straightforward requests for information so there is no need to seek legal advice. Building Control Notices included next item.
8.	Issue of Enforcement Notices, Completion Notices, Stop Notices, Temporary Stop Notices and Breach of Condition Notices (see under Planning (Listed Building and Conservation Areas Act 1990 for listed buildings enforcement)	Executive Director; or HoPS, PDM; Enforcement Officers and Senior Conservation Officers; in conjunction with LGSS Legal Service as required; with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND	To ensure coverage of Temporary Stop Notices which are often urgent

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		THE DATE OF AUTHORISATION. Notice of intention to take action to be given to Ward Members	
9.	Rescind Enforcement Notices (or authority to take action) where matters have been satisfactorily resolved <u>Withdraw, waive or relax any requirement of an Enforcement Notice pursuant to Section 173A of the Town and Country Planning Act 1990</u>	Executive Director; or HoPS, PDM; Senior Enforcement Officers and Senior Conservation Officers; with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION. Notice of intention to take action to be given to Ward Members	Clearer wording as Enforcement <u>Enforcement</u> Notices usually retained on file even when resolved
11.	Service of Discontinuance Notices under the Town and Country Planning (Control of Advertisement) Regulations.	Executive Director; or HoPS, PDM; in conjunction with LGSS Legal Service <u>if required</u> ; with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION Notice of intention to take action to be given to Ward Members	Rarely used power where legal advice not often required.
12.	Notifications	To deal with notifications received for agricultural and telecommunications development, hazardous substances and demolition proposals HoPS, PDM; Executive Director, with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION	These two lines to be moved to be new line 5 and 6 with consequent renumbering as not Enforcement issues
13.	Legal Agreements (S106)	Execution and completion of Agreements under Section 106 of the Town and Country Planning Act 1990 in relation to applications for planning -permission granted under delegated powers. Chief Executive, HoPS, PDM, Executive Director in conjunction with LGSS Legal Service	

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14.A	Authority to enter land and premises for the reasons set out in Section 196A	Executive Director, HoPS, PDM; Enforcement Officers, Senior Enforcement Officer and Senior Conservation Officer; with the ability to specify other officers to act SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION	To separate out the two related powers
14B	Authority to make applications to the Magistrates Court for a warrant authorising entry pursuant to Section 196B for enforcement purposes	<u>Executive Director, HoPS, PDM; Enforcement Officers, Senior Enforcement Officer and Senior Conservation Officer; with the ability to specify other officers to act SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION</u>	
15.	Prosecution –great urgency		
	<u>Authority to instruct legal services to commence prosecution proceedings (including laying information for contravention of regulations and instigation of emergency injunctions)</u>	LGSS Legal Service IN CONSULTATION WITH THE CHAIRMAN AND THEN SUBJECT TO RETROSPECTIVE RATIFICATION REPORTING BY PERFORMANCE MANAGEMENT DEVELOPMENT CONTROL COMMITTEE	Clarification that action will be taken and reported after the event because of the urgent nature
16.	Footpath Orders (both Town and Country Planning Act and Highways Act 1980)	Confirmation of unopposed diversion or extinguishment orders made following the grant of planning permission. (Town and Country Planning Act) and the making and confirmation of diversion orders under the Highways Act HoPS or LGSS Legal Service (under instruction from HoPS) SUBJECT TO REPORTING TO MEMBERS	Move to Line 7 with consequent renumbering
	Listed & Historic Buildings: (Planning (Listed Buildings and Conservation Areas) Act 1990)		
18.	To issue serve Listed Building Enforcement Notices	HoPS, PDM, Executive Director, <u>Senior Enforcement Officer</u> , Enforcement Officers and Senior Conservation Officer, in conjunction with LGSS Legal Service	Corrected wording and recognition of additional post
	TREES AND LANDSCAPE		
	Trees: (The Hedgerow Regulations 1997)		
20.	The issuing of Notices to replant a hedgerow or to reinstate a gap in a	HoPS, PDM; Planning Policy & Conservation Manager SUBJECT TO	Clarification

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	hedgerow where it appears that a hedgerow has been removed in contravention of Regulation 5(1) or (9)	REPORTING TO LOCAL WARD MEMBERS	
	<i>Local Government (Misc. Provisions) Act 1976</i>		
149	To serve Requisitions for Information (Section 16)	Head of Environmental Services; Environmental Protection Manager; Health Protection Manager; Executive Director; Chief Executive; Waste Services Manager; Senior Environmental Health Officer, Environmental Health Officer; Trainee Environmental Health Officer; Health Protection Officer; Licensing Enforcement Officer; Senior Environmental Protection Officer; Environmental Protection Officer; Environmental Services Officer; Housing Technical Officer; , Waste Management Officer Head of Planning Services, Senior Enforcement Officer, Enforcement Officers	To include Planning Service requirements for information