

Supplementary Committee Agenda



Overview and Scrutiny Committee Thursday, 16th April, 2009

Place: Council Chamber, Civic Offices, High Street, Epping

Time: 7.30 pm

Committee Secretary: Simon Hill, Senior Democratic Services Officer, The Office of the Chief Executive
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11.a Constitution & Member Services Standing Scrutiny Panel (SSP) - 6.4.09 (Pages 3 - 14)

(Councillor Mrs M. McEwen – Chairman of the Constitution and Member Services Standing Panel) To consider the attached reports from the SSP concerning:

- (a) Review of Officer Delegation – 2008/9
- (b) Police & Justice Act 2006 – Establishment of a Safer Communities Committee

These late items have been added to the Agenda with the agreement of the Chairman.

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Report to Overview and Scrutiny Committee

Date of meeting: 16 April 2009

SCRUTINY



Report of: Constitution and Member Services
Standing Scrutiny Panel

Subject: Officer Delegation - Annual Review 2008/9

Officer contact for further information: I Willett (01992 564243)

Democratic Services Assistant: A Hendry (01992 564246)

Recommendations:

(1) That the changes to officer delegation as recommended in Appendix 1 to this report be approved and submitted for adoption by the Leader of Council;

(2) That the proposed changes to officer delegation recommended in Appendix 2 be approved and recommended to the Council for adoption at its April 2009 meeting; and

(3) That a report be submitted to the Council recommending that the Assistant to the Chief Executive incorporate within the final versions of officer delegation minor drafting changes including typographical errors, changes in officer delegations as a result of Senior Management Review and any changes in legislation which have occurred since the last review took place.

Report:

1. Each year the Council reviews its scheme of officer delegation and this task has once again been undertaken by a working party of officers.
- ... 2. Appendix 1 to this report sets out changes to delegation being proposed in respect of Cabinet functions whilst Appendix 2 shows changes to functions which remain the responsibility of the Council. The latter includes regulatory and non-executive functions.
3. One change which will take effect from 2009/10 is in relation to the approval of delegation of Cabinet functions to officers. Previously any changes have been referred to the Council for approval but it will now be the Leader of the Council who determines whether the scheme of officer delegation is to continue or whether changes should be made.
4. With this in mind, any recommendations arising from Appendix 1 should be submitted to the Overview and Scrutiny Committee for approval prior to submission to the Leader of Council. In relation to Appendix 2, the Panel would recommend to the Overview and Scrutiny Committee and, through that Committee, the Council.

5. The two Appendices show amendments in matters of substance relating to officer delegations. There are a number of typographical corrections, changes in officer delegations and responsibilities, changes in legislation or minor drafting changes which also need to be dealt with. Authority is requested from the Panel that the Assistant to the Chief Executive should make these minor alterations, prior to submission to the Council and the Leader of the Council.
6. We recommend as set out at the commencement of this report.

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16 APRIL 09 – REPORT - OFFICER DELEGATION.DOC

WORKING GROUP ON CONTRACT STANDING ORDERS, FINANCIAL REGULATIONS AND OFFICER DELEGATION

SCHEDULE OF DELEGATION REVIEWS - EXECUTIVE

1. North Weald Airfield - Non Commercial Lettings (Delegation Reference N2)

The Current wording of delegation N2 places responsibility for all lettings of the Airfield with the Director of Corporate Support Services. The delegation does not reflect the involvement of Airfield staff in negotiating routine or casual bookings of Airfield facilities which is the responsibility of the Director of Environment and Street Scene.

The Director of Corporate Support Services is responsible for negotiating other bookings (i.e., those which are not routine) and also for drawing up licences and similar agreements. Equally, the Director of Corporate Support Services may draw up agreements for lettings etc., negotiated by the Airfield Manager.

It is suggested that the delegation should be re-drafted to reflect better the roles of the two Directorates concerned.

Recommendation:

That delegation N2 be revised as follows:

Function	Responsible
(a) To negotiate and produce agreements and licences for all regular bookings and single events (of a non public character) which comply with the standard licence agreement and fees operated by the Council	Director of Environment and Street Scene (or nominated officer)
(b) To negotiate in liaison with the Airfield Manager, any arrangements regarding use of the Airfield (except those which fall under item (a) above), and, where appropriate, to draft and execute appropriate agreements or licences for all Airfield uses including any negotiated under (a) above, which may be referred to the Director of Corporate Support Services.	Director of Corporate Support Services (or nominated officer)

2. **Licensing - Hackney Carriage and Private Hire Vehicle Drivers (Delegation Reference S1)**

The Licensing Committee revised the officer delegations in respect of Hackney Carriages etc at its meeting in October 2008, as follows:

"1. All applications for Hackney Carriage and Private Hire Vehicle Driver's licences will be determined by the Director of Corporate Support Services, the Assistant Director of Legal Services and the Senior Licensing Officer or suitably qualified officers authorised by them to exercise this function except in the following circumstances when the application will be referred to the Sub-Committee:

(a) where there have been breaches of condition of a previous driver's licence or related law in the preceding twelve months;

(b) an applicant fails to comply with the Council's licensing procedure or meet the experience or medical fitness requirements;

(c) where in the opinion of the Council's medical advisor (or doctor nominated by them), an applicant is not medically fit to hold a driver's licence;

(d) an applicant for a driver's licence has any unspent criminal convictions;

(e) an applicant has motoring convictions listed below:

(i) disqualification from driving by a court for any reason within the preceding ten years;

(ii) an accumulation of a total of ten or more penalty points from endorsable motoring offences in any of the preceding five years; or

(iii) any unspent conviction for an offence or offences within the following categories:

- CD10 Driving without due care and attention;
- CD20 Driving without reasonable consideration for other road users;
- CD30 Driving without due care and attention or without reasonable consideration for other road users;
- CD40 Causing death through careless driving when unfit through drink;
- CD50 Causing death by careless driving when unfit through drugs;
- CD60 Causing death by careless driving with alcohol level above the limit;
- CD70 Causing death by careless driving then failing to supply a specimen for analysis; or

- DD30 Reckless driving;
- DD40 Dangerous driving; or

- IN10 Using a vehicle uninsured against third party risks."

- SP60 Undefined speed limit offence

2. Where Director of Corporate Support Services, the Assistant Director (Legal) or the Senior Licensing Officer consider it appropriate to exercise her discretion by reason of their concern as to the suitability of the applicant they may refer the application to the Licensing Sub-Committee.

3. The Director of Corporate Support Services, the Assistant Director (Legal) and the Senior Licensing Officer may grant at their discretion a licence for a short period until the next meeting of the Licensing Sub-Committee if a driver wishing to renew his or her licence has committed an offence such that there is no delegated authority to renew the licence.

Recommendation:

To incorporate these changes in the schedule of delegation

3. Parking Contravention Notices (New Delegation)

The schedule of delegation currently omits any reference to the Traffic Management Act 2004 and the supporting operational guidance from the Government regarding parking policy and enforcement.

The Act requires that elected members and unauthorised staff should not be involved in adjudicating on the outcome of individual challenges or representations in response to contravention notices. The statutory requirement is for such matters to be dealt with by fully trained staff to ensure that the criteria for cancelling notices are followed.

Recommendation:

That the following new delegation be included in the Schedule of Delegation as follows:

"Traffic Management Act 2004 - Penalty Charge Notices (Parking)

To consider representations or challenges to Penalty Charge Notices issued by the Council and decide, if the evidence or circumstances provide grounds for doing so, to cancel any notice.

Director of Environment and Street Scene (or suitably qualified staff authorised to act on his behalf)"

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**WORKING GROUP ON CONTRACT STANDING ORDERS, FINANCIAL REGULATIONS
AND OFFICER DELEGATION**

SCHEDULE OF DELEGATION REVIEWS – COUNCIL

1. Development Control (Delegation Reference P4) (g) and (h)

**(a) Local Council and Members' Requests for Reference of Planning
Applications to Area Plans Sub Committees**

1. This delegation relates to planning applications which would normally be dealt with under delegated authority but which under certain circumstances can be referred to an Area Plans Sub Committee.

2. Items (g) and (h) of P4 were amended last year to require that member requests for applications to be referred to Area Plans Sub Committees should be subject to a deadline of 4 weeks from the date of receipt of the relevant Council Bulletin list. This was to avoid such requests being received shortly before Sub Committee meetings resulting in the item having to be deferred to a later meeting with an adverse effect on the Council's performance against the eight week BVPI target.

3. A change was also made in respect of representations by local councils whereby reference to a Sub Committee would only occur if the views expressed related to material planning considerations and where applications are recommended contrary to an objection from a local council.

4. The net effect of these changes, together with the change to the 3 weeks Area Plans Sub cycle has resulted in 36 more cases being determined within the 8 week period. We feel that these arrangements have operated satisfactorily over the past year and that they should be confirmed.

Recommendation:

To confirm the changes to P4(g) and (h).

**(b) Planning Objections by Parish and Town Councils (Delegation
Reference P4)**

5. Item P4(g) requires (as stated above) that any proposed decision under the Director of Planning and Economic Development's delegated authority to grant consent contrary to an objection from a local council on grounds which are material to the planning merits of the proposal, must be referred to Area Plans Sub Committees for determination.

Councillor J Knapman asked the Panel to consider the following proposal:

6. "Delegated powers should not be used if the Director of Planning and Economic Development intends to refuse a planning application where a local council

has indicated a measure of support in its response and that such cases should stand referred to the relevant Area Plans Sub Committee."

For the following reasons:

"Most Parish Councils state "no objection" which appears to be viewed by Planning Officers as a neutral stance on applications, thereby giving authority to make a delegated decision either to grant or refuse consent. Sometimes, the comments of local councils which accompany "no objection" can indicate support for an application. The officer delegation should therefore provide for such comments to be taken into account in deciding whether reference to a Sub Committee should take place."

Review of Proposal

7. We considered that Councillor Knapman's proposal would lead to uncertainty since it is unclear what should be taken as an indication of support. Our view is that because of the lack of clarity the amendment will be likely to lead to disagreements on whether a local council has actually expressed support. Councillor Knapman's proposal could therefore cause uncertainty and conflict between officers, members and local councils. That uncertainty could also threaten the validity of decisions taken under delegated powers and therefore leave them open to legal challenge.

8. It should be recalled that if local councils are supportive of an application it is open to them under existing arrangements to express their support. They can start their comments with the word "Support".

9. We also feel that the proposal will also result in more applications going to Committee for decision. This could result in a decision on an application being made outside the statutory period. The District Councils' objective of achieving upper quartile performance for planning performance could therefore be undermined.

10. As an alternative, we are recommending that further advice should be given to local councils to avoid any ambiguity in responses. It is also suggested that when the Council is, moving to an era of electronic responses, it might be useful to include "tick" boxes with supporting comments which make the views of the local council clear.

Recommendation:

That no change be made to delegation P4(3) and that further advice to local councils on the current format for submission of comments and any future move to electronic submissions should be given by the Director of Planning & Economic Development so as to avoid any ambiguity in the future.

Report to Overview and Scrutiny Committee

Date of meeting: 16 April 2009

Report of: Constitution and Member Services
Standing Scrutiny Panel

Subject: Police and Justice Act 2006 – Community Safety Committees

Officer contact for further information: I Willett (01992 564243)

Democratic Services Assistant: A Hendry (01992 564246)



Recommendations:

- (1) That in regard to the establishment of a Community Safety Committee under the Police and Justice 2006 Act, the Safer, Cleaner, Greener SSP be designated as the Council's Community Safety Committee;**
- (2) That consideration be given to the Committee's June 2009 meeting to the following:**
 - (a) the manner in which the statutory requirement for at least two meetings of the designated Community Safety Committee will be held;**
 - (b) co-option arrangements; and**
 - (c) the terms of reference of the Community Safety Committee, its membership and other constitutional changes for adoption by the Council.**

Report:

Introduction

1. Notification has recently been received from the Home Office that it is intended to bring into force Sections 19-21 of the Police and Justice Act 2006 with effect from 30 April 2009.

Statutory Requirements

2. Sections 19-21 are designed to ensure that every local authority will have a committee (to be called the "Crime and Disorder Committee") which will have the following powers:

- (a) To review or scrutinise the decisions made, or other action taken, in connection with the discharge by responsible authorities of their crime and disorder functions; and**
- (b) To make reports or recommendations to a local authority or any other partnership body on the carrying out of those functions.**

3. In addition, the Councillor call for action includes crime and disorder matters as well as other local government issues. These are dealt with in a separate report to this meeting.

4. These changes and the implementation of the Act will be introduced in new Government regulations which are as yet in draft form only. Key features of the draft regulations are summarised below:

Co-option

- (a) Committees will be able to co-opt additional members if this is considered appropriate for the Committee's functions;
- (b) co-optees will have the same voting rights as any other members;
- (c) co-optees' membership can be limited to a specific matter or group of issues;
- (d) Committees will not be able to co-opt any person who was involved in the decision or action under review;
- (e) the number of co-opted members must not exceed the number of permanent committee members;
- (f) co-optees are restricted to those who are employees or officers of the Council, any co-operating person or body;
- (g) members of a Local Authority Executive (Cabinet) may not be members of a Crime and Disorder Committee;
- (h) Committees will be required to consult the relevant body on the most suitable co-optee;
- (i) the membership of a co-opted person may be withdrawn at any time by the Committee.

Frequency of Meetings

- (j) Crime and Disorder Committees will be required to meet no less than twice in every 12 month period.

Requests for Information

- (k) Committees have rights to receive information from local authorities, co-operating persons or bodies when requested;
- (l) information must be provided no later than the date indicated in the Committee's request or within an agreed timescale which is reasonable in the circumstances;
- (m) information must exclude the identification of any living individual unless this is necessary or appropriate for the exercise of the Committee's powers.
- (n) information provided must exclude anything which would prejudice current or future operations of any responsible authority;

Attendance at Committee Meetings

- (o) Committees will be able to require the attendance of an officer or employee of a responsible authority or co-operating body in order to answer questions or provide information, subject to at least two weeks' notice of the date of the meeting being given;

(p) persons invited are required to attend unless there is a reasonable excuse for absence;

Reports and Recommendations of Committees

(q) where a Crime and Disorder Committee makes a report or recommendations to a responsible authority etc, responses by the recipients must be in writing and submitted to the Committee within a period of one month or as soon as possible thereafter;

(r) a Crime and Disorder Committee is required to review such responses and monitor the action (if any) taken by the responsible person or authority.

Implications for Epping Forest District Council

5. The Committee will appreciate that the timescale being provided by Government for the introduction of Crime and Disorder Committees is extremely short. It is suggested that the Committee at its April 2009 meeting (when Panels are appointed and the work programme agreed) should consider how Overview and Scrutiny is to meet the requirements of the 2006 Act in regard to the establishment of a Community Safety Committee. We considered four options as follows:

(a) Option 1 - Establish a new Committee under the Overview and Scrutiny banner;

(b) Option 2 – Amend the Terms of Reference of the Overview and Scrutiny Committee to cover crime and disorder responsibilities and designate that Committee as the Council's Community Safety Committee;

(c) Option 3 – Establish a new Community Safety SSP, amending the Terms of Reference of the Safer, Cleaner, Greener SSP by excluding crime and disorder matters and designating the new SSP as the Community Safety Committee.

6. The Standing Scrutiny Panel on the “Safer, Cleaner, Greener Initiative” includes within its Terms of Reference monitoring of crime and disorder issues. Recommendation (1) to this report sets out this option as our preferred solution.

7. The Act requires the Community Safety Committee to meet on a minimum of two occasions in every 12 months so it is important that the Council considers how this particular requirement is to be met. If a new body is established, two dates need to be included in the calendar of meetings. If an existing body is to be designated as the Crime and Disorder Committee, it may be necessary to consider having two designated meetings of the body concerned so that the Council is seen to meet the statutory obligations.

8. Memberships of the new Committee need to be agreed in June 2009 along with co-option proposals, any amendments to the Constitution and meeting dates. The Constitutional changes relating to this Committee will need to be adopted by the full Council as soon as possible after the Committee meeting in June.

9. This report is based on draft Government regulations on Crime and Disorder Committees. It remains possible that the details may change between now and final publication but it seems that the need to establish a Committee is clear and that the Council should be considering now how it intends to respond. Any changes in the final regulations will be reported to the Overview and Scrutiny Committee in June.

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