

Report to the Council

Report of: Constitution and Member Services
Standing Scrutiny Panel

Subject: Officer Delegation - Annual Review 2007/8

Date: 15 May 2008

1. OFFICER DELEGATION - ANNUAL REVIEW 2007/8

Recommendations:

- (1) That the proposed revisions to officer delegation outlined in this report be improved and incorporated in the Council's Constitution;**
- (2) That once the Council has approved the changes the format of the schedule be altered to create two new schedules as follows:**
 - (a) executive functions – for approval by the Leader of the Council in compliance with the Local Government and Public Access to Health Act 2007; and**
 - (b) Council/regulatory functions – for approval by the Council;**
- (3) That these arrangements be put in place for the next annual review of officer delegation;**
- (4) That, over the forthcoming year, each of the new formats set out in (2) above, be restructured to provide a list of delegations for each chief officer based on statutory and non-statutory delegated powers; and**
- (5) That the revised officer delegations in respect of Planning Applications (Ref P4) be reviewed as part of the 2008/9 review.**

Report

1. We were authorised by the Overview and Scrutiny Committee to report direct to this meeting of the Council on our review of officer delegation. This Council is committed each year to review its officer delegation and with this in mind an Officer Working Party of representatives from Service Directorates has been reviewing any proposals for change including those arising from recent Service restructuring. The Working Party has consulted all chief officers and the changes required are outlined in this report. It is necessary for this review (along with those of contract standing orders and financial regulations) to be completed before the next external audit.

2. The changes we consider necessary are discussed below:

(a) Effect of Top Management Restructuring (All references)

3. The schedule of delegations has been amended to deal with changes in post titles arising from the Top Management review and also the reallocation of responsibilities between Service Directors.

(b) Delegations held by the Council's Medical Advisers (Various References)

4. The schedule has been revised to delete references to the Consultant in Communicable Disease Control (CCDC) and to substitute the Health Protection Agency (HPA). The delegated powers are now held on behalf of the Council by any Consultant member of that Agency.

(c) Data Protection Act – Proper Officer (Ref: D1)

5. Responsibility for Data Protection matters has transferred from the former Head of ICT to the Director of Finance and ICT.

(d) Vehicle Purchases (Ref: D5)

6. The present delegated authority D5 provides delegated authority to the Works Unit to purchase vehicles in accordance with requirements at the best market rate. With the demise of the Works Unit, this delegated authority is defunct and any proposals in respect of vehicle purchases will be brought forward to Portfolio Holders or the Cabinet as appropriate.

(e) Leisure Fees and Charges (Ref: F1)

7. The former Leisure Services Department has been reallocated to Environmental and Street Scene and the Deputy Chief Executive's Unit.

8. Existing delegated authority relating to Leisure fees and charges has also been reallocated. Those fees and charges for cultural and community services should now be held by the Deputy Chief Executive. Other Leisure fees and charges relate to the Leisure Management Contract currently operated by SLM. The delegated authority to discuss and agree fee changes with SLM should now transfer to the Director of Environment and Street Scene.

(f) High Court Authorisation (Ref: H5)

9. High Court authorisations have been transferred to the Director of Corporate Support Services under delegation H6. The opportunity has also been taken in the Schedule to consolidate all High Court authorisations agreed by the Council in the past under that reference.

(g) Land Drainage/Flood Defence (Ref: L2)

10. Delegation L2 (Land Drainage and Flood Defence) has been updated to refer to the 2005 byelaws agreed by the Council. These replaced the previous byelaws dated 1983. These authorisations relate to powers to maintain, construct and improve drainage works, etc.

(h) North Weald Airfield – Lettings (Ref: N2)

11. Delegated Authority N2 relates partly to Estate Management of the commercial premises on the Airfield and partly to leisure activities, which take place there. Responsibility for North Weald Airfield has been divided under the Top Management review. The Deputy Chief Executive is responsible for policy issues and future development. The Director of Environment and Street Scene is responsible for day-to-day operation. Implementation of the new Top Management structure will have to address how existing delegated authorities should operate in relation to the Airfield. It is thus not possible at this review to come forward with firm proposals. Therefore, at the next review when the new structure has been fully implemented proposals for reviewing these delegations will be brought forward.
12. In the meantime, the Deputy Chief Executive and the Director of Environment and Street Scene will consult on how those existing delegated authorities will operate. So far as can be judged at the present, the Estate Management activities of the Director of Corporate Support Services will not be affected by these changes.

(i) Planning Applications (Ref: P4)

13. The Director of Planning and Economic Development has brought forward proposals to us for minor changes to delegated Authority P4. This delegated authority is structured on the basis of delegation to officers for determining planning applications subject to exceptions, which are set out in Schedule A. The changes propose relate to those items, which are excluded from delegated authority:
 - (a) sub-paragraph (e) requires all applications where the Council is the applicant to be determined by Committee but recent experience shows that a number of minor non-contentious applications have been taking up Committee time due to the wording of the current delegation. These have included matters such as alterations to a single dwelling for a disabled occupier and continued use of an existing building. The suggested changes are that sub-paragraph (e) should be amended to refer to, "the Council's own applications on its land or property which is for disposal". This will have the effect that any site being proposed for a new development or for sale with permission will have to be referred to Committee but other minor works can be determined under delegated powers. It should also be borne in mind that paragraphs (f), (g) and (h) of this delegation will still apply and ensure that any contentious proposal will still be referred to the Committee.
 - (b) Schedule A sub-paragraph (g) is currently contradicted by sub-paragraph (l). In order to clarify the issue it is recommended that paragraph (g) should read as follows:

"Applications recommended contrary to an objection from a local council material to the planning merits of the proposal."

This will be consistent with other references in the Schedule and would avoid the need to involve committees in applications that have no comments relevant to the planning merits of the application and to enable the full provisions of paragraph (h) to be taken into account.
 - (c) paragraph (h) of Schedule A enables any member to "call-in" an application to Committee. It is suggested that there should be a time limit on the ability of a member to call-in in this way. It is suggested that the limit should be set at 4 weeks from the date of receipt of the application. This would enable better planning of

committee agenda to take place rather than the late insertion of items on the agenda at the request of individual members without time to prepare properly presented reports and may avoid applications missing an agenda deadline altogether. It should be borne in mind that in these cases were the member "call-in" not to be received those applications will be determined at officer level.

14. It is not expected that these minor changes to delegation will significantly affect the number of applications referred to Committee, possibly only a handfull each year. However, because of the continuing pressure to achieve top quartile performance, these minor changes will help with turnaround in a small way. We support these changes but have asked that they be reviewed specifically in time for 2009/10.

(j) Regulation of Investigatory Powers Act 2000 – Designation of RIPA Officer and Deputy (Ref: R4)

15. A new delegated authority R4 has been included in the Schedule to reflect the transfer of responsibility for the regulation of Investigatory Powers Act 2000 to the Director of Corporate Support Services with the Assistant to the Chief Executive acting as her Deputy. This Act relates to the approval of directed surveillance for the purpose of preventing or detecting crime or preventing disorder. The role of the RIPA Officer (or in her absence the Deputy) is to consider proposals for directed surveillance from Service Directorates and to authorise those proposals subject to the following checks: that the applications are looked at on their merits; that the measure meets the criteria set out in the Act namely, crime prevention, etc. and that the measure is proportionate to the desired objective. The extent of the delegation is limited to Article 4 of the Act, which are those, which are most likely to be exercisable by the Council.

(k) Licensing (Ref: S1)

16. The review of directorate responsibilities has placed licensing with the Director of Corporate Support Services (DOCSS) with enforcement aspects remaining with the Director of Environment and Street Scene (DOESS). This necessitates changes to officer delegation (item E10 - Environment Legislation - Authorisation of Officers). Appendix A shows a listing of all powers in regard to environmental health legislation which are to be exercised by the DOESS. The previous Appendix has been divided into two with those delegations exercised by DOCSS and DOESS set out in a new Appendix B.
17. In addition, Appendix C (Gambling Act 2005) now lists those powers now being delegated to the DOCSS.
18. This delegation will operate in future as it does at present for other environmental health powers exercised by DOESS, namely:
 - (a) the DOCSS will have authority to authorise suitably-qualified officers to exercise those functions;
 - (b) the appropriate Portfolio Holder will be empowered to delegate the Appendices A and B to the DOCSS or DOESS as appropriate and to update the Schedule of Legislation as the statutes change.
19. Licensing delegations and those relating to other environmental legislation have been grouped together under a new heading "Safer, Cleaner, Greener" Legislation.

Conclusion

20. As the Council can see, the extent of the changes to the Schedule of Officer Delegation is limited. In the future, a new procedure will need to be adopted in this regard because under the 2007 Act all Cabinet based delegations to officers must be agreed by the Leader rather than the Council. Some delegations related to non-Cabinet matters will remain for approval by the Council each year.
21. With this in mind, the Schedule of Delegations in its present form will cease and two new Schedules created for Cabinet and non-Cabinet matters. It is also planned to adopt a different approach in how these delegations are displayed. The new approach is to itemise these by Service Directorates and categorise them according to statutory and non-statutory matters. This should, in future years, make the review easier to progress. These revisions will be worked on in the next few months and re-submitted once the implementation date for the change to the new Executive Constitution has been reached.

Current Delegations

- ... 22. The full Schedule of Delegations is attached as an Appendix to this report. We recommend as set out at the commencement of this report.